BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AE/2021-22/13679]

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

In respect of:

Aditya Birla Money Ltd. (PAN : AAACA7472K)

SEBI Stock Broker Registration No. INZ000172636

Depository Participant Registration No. IN-DP-17-2015

FACTS OF THE CASE

1. Adjudication proceedings were initiated against M/s Aditya Birla Money Ltd. (hereinafter referred to as '**ABML**' **/ 'the Noticee'**) based on a joint inspection of the Noticee conducted by Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) along with the Stock Exchanges, namely, Bombay Stock Exchange (hereinafter referred to as '**BSE**') and National Stock Exchange (hereinafter referred to as '**NSE**'), and Depositories, namely, Central Depository Services Limited (hereinafter referred to as '**CDSL**') and National Securities Depository Limited (hereinafter referred to as '**NSDL**') in March 2019 and a special

purpose inspection conducted by SEBI – Southern Regional Office (SEBI-SRO) in March 2018.

2. Based on the findings of the inspection, the adjudication proceedings were initiated against the Noticee under Section 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**'), and Section 23D of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA, 1956**') for the alleged violation of the following provisions:

    1. Regulation 14(1)(a) of SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as '**PM Regulations**').
    2. Clauses A (1), (2), (5) and B (7) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI (Stock-Broker) Regulations, 1992.
    3. SEBI Circular no. SEBI/HO/MIRSD /DOP1/CIR/P /2018/54 dated March 22, 2018
    4. Clauses (A)(1) and (A)(2) of Code of Conduct mentioned in Schedule II read with Regulation 9 SEBI (Stock Brokers) Regulations, 1992
    5. Regulation 3(a) and Regulations 4(1), 4(2)(l), 4(2)(m), 4(2)(o) and 4(2)(p) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**').
    6. Clauses (A)(3), (A)(5) and B(4)(b) of Code of Conduct mentioned in Schedule II read with Regulation 9 SEBI (Stock Brokers) Regulations, 1992
    7. Regulations 3(a) and 4(1) of PFUTP Regulations.
    8. Clauses A (1), A (2) and A (5) of Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992
    9. Regulations 4(2)(l) and (o) of PFUTP Regulations.
    10. Clauses (B)(4)(a) and (b) of the Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.
    11. Clause 12e of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

12. SEBI Circular ref no. CIR/MIRSD/66/2016 dated July 21, 2016.
13. Clause 4 of SEBI circular MRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006.
14. Point no 1.12 of SEBI Master Circular for Depositories SEBI/HO/MRD/DP/CIR/P/2016 /134 dated December 15, 2016.
15. Clause 2 of SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993.

APPOINTMENT OF ADJUDICATING OFFICER

3. Initially, Ms, Sangeeta Rathod, General manager was appointed as Adjudicating Officer vide communique dated September 24, 2019 under Section 19 read with Section 15 I(1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") and Section 23-I of SCRA, 1956 and Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as the "**SCR Adjudication Rules**") to inquire into and adjudge under Sections 15HA and 15HB of the SEBI Act 1992 and Section 23D of SCRA, 1956 the aforesaid violations alleged to have been committed by the Noticee. Subsequently, vide communique dated October 28, 2020, the undersigned was appointed as Adjudicating Officer in the matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice (hereinafter referred to as "**SCN**") dated February 14, 2020 was issued to the Noticee under Rule 4 of the SEBI Adjudication Rules and Rule 4 of the SCR Adjudication Rules calling upon to show cause as to why an inquiry should not be initiated against the Noticee and why penalty, if any, should not be imposed on them for the alleged violations of the provisions mentioned above.

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

1. Operational Department of SEBI (OD) conducted the said inspection of Noticee during March 26-30, 2019 to verify the possible violation(s) of the provisions of SEBI Act, 1992, SEBI (Stock Brokers) Regulations, 1992 and SCRA, 1956 and conveyed the findings of inspection vide letter dated May 29, 2019 to the Noticee. You have replied to the OD regarding your views as against various observations made by OD. Having analyzed responses of the Noticee (relevant extracts of analysis enclosed as **Annexure B** in CD), OD has alleged as under:

A. Unauthorized Trading and Portfolio Management Services (PMS) to Unregistered PMS Clients

OD provided three samples of 84 clients and 184 trades to the Noticee and sought evidence for order placement/trade confirmation. Upon analyzing emails and call recordings (enclosed as **Annexure C** in CD), OD observed that clients had just confirmed the recommendations of the Noticee and clients had not initiated the said trades. The clients were passively involved in the decision making. OD noted that Noticee executed the trades in the client's accounts and later informed the clients about the same. OD alleges that Noticee had managed the trading accounts of clients and given PMS to clients without entering into PMS agreement with these clients, which were otherwise categorized as retail clients. Further, OD verified resolution of complaints received directly by the Noticee. OD took 20 complaints (transcripts of complaints is enclosed as **Annexure D** in CD) pertaining to unauthorized trades/misappropriation as a sample out of 403 complaints received directly and closed by Noticee. OD analysed relevant emails and call recordings to understand the complaint resolution process used by Noticee. In this regard, OD made following observations:

a) In one case there was no trade confirmation from client's side and in 12 cases confirmation w.r.t to trades executed in the account of clients was taken from clients post execution of the trades.
b) Noticee was managing the client's portfolio/account as it was directing the client about the positions.
c) Noticee also informed the clients about prices at which it will close the position and buy or sell specific stocks and was at the discretionary side.

d) Noticee assured the client that positions that were in loss, were calls given by the company. Hence, there was no problem to carry forward the same and the Noticee had left positions open until there was profit to be booked.

e) Noticee had given the details of profit i.e. Rs. 3000/- made by it on a particular day, in the account of client and asked permission of client to generate more profit.

f) In seven instances, Noticee while sending the email to complainant to close the complaints inter alia mentioned that client had confirmed the trades when trade confirmation calls were made to client by Noticee, and client was part of decision making.

Thus, OD observed that client was not the only person who was taking the decision w.r.t trades. By making trades confirmation calls to clients after executing the same, Noticee had tried to validate trades executed by Noticee. OD observed that Noticee was managing the accounts of clients and taking trading decisions on behalf of clients. Noticee was also managing the portfolios of clients.

As per Regulation 14(1)(a) of PM Regulations, a portfolio manager should enter into an agreement with the client before taking up management of a portfolio of securities on its behalf, which was not done by Noticee as alleged by OD. As per Clauses A(1), (2), (5) and B(7) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI (Stock-Broker) Regulations, 1992, a registered stock broker should maintain high standards of integrity, exercise due skill and care, comply with statutory requirements and should not make investment advice to client in ordinary circumstances, which was not followed by Noticee as alleged by OD. As per SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P /2018/54 dated March 22, 2018, brokers should execute trades of clients only after keeping evidence of the client placing such order, which was not done by Noticee as alleged by OD. Thus, Noticee allegedly violated Regulation 14(1)(a) of PM Regulations, Clauses A(1), (2), (5) and B(7) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI (Stock-Broker) Regulations, 1992 and SEBI Circular no. SEBI/HO/MIRSD /DOP1/CIR/P /2018/54 dated March 22, 2018.

B. Lack of Adequate Systems and Internal Controls

OD observed that Noticee had assigned dedicated terminals such as for research, broking, PMS, Non-Discretionary Portfolio Management Service, backup for both PMS

etc. (list of Computer-To-Computer-Link network terminals submitted by broker enclosed as **Annexure E** in CD) and for execution of trades of clients falling under respective categories. OD sought information from NSE w.r.t trades executed through terminals assigned for PMS clients by Noticee. On perusal of the data received from NSE, OD observed that trades of 46 individual/retail clients (list enclosed as **Annexure F** as CD) mentioned in Sample one were executed through above mentioned PMS terminals that were dedicated by Noticee exclusively to execute trades of clients availing PMS services. In view of the above, OD observed violation of own guidelines by Noticee and thereby a lack of adequate systems and internal controls. Further, considering the PMS services given by Noticee to clients who were not registered as PMS clients and high number of instances of unauthorized trading and post trade confirmation taken from clients, OD observed that Noticee did not have adequate systems and internal controls to ensure due skill, care and diligence in conduct of its business and dealing with their clients. As per Clauses A(1) and (2) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI (Stock-Broker) Regulations, 1992, a registered stock broker should maintain high standards of integrity, and exercise due skill and care, which was not done by Noticee as alleged by OD. Thus, Noticee allegedly violated Clauses (A)(1) and (A)(2) of Code of Conduct mentioned in Schedule II read with Regulation 9 SEBI (Stock Brokers) Regulations, 1992.

C. Misleading the clients by understating losses and overstating profits

OD observed that Pay-outs were made to KTM investors, claiming them to be profit pay-outs, when the investors were actually making losses. Further, OD observed that various statements were provided to the investors claiming to be profit and loss statements, which were at variance with the actual positions and had understated losses and shown fictitious/ overstated profits, and Noticee concealed the material facts and gave false statements to the clients. As per Regulation 3(a) and Regulations 4(1), 4(2)(l), 4(2)(m), 4(2)(o) and 4(2)(p) of PFUTP Regulations, no person should deal in securities in fraudulent manner or indulge in a manipulative, fraudulent or an unfair trade practice in securities markets, which was not adhered to by the Noticee as alleged by OD. As per Clauses (A)(3), (A)(5) and B(4)(b) of Code of Conduct mentioned in Schedule II read with Regulation 9 SEBI (Stock Brokers) Regulations, 1992, a registered broker should comply with statutory requirements and should not indulge in manipulation or furnish false quotation/ other information with objective of

earning commission, which was not adhered to by Noticee as alleged by OD. Thus, Noticee allegedly violated Regulation 3(a) and Regulations 4(1), 4(2)(l), 4(2)(m), 4(2)(o) and 4(2)(p) of PFUTP Regulations and Clauses (A)(3), (A)(5) and B(4)(b) of Code of Conduct mentioned in Schedule II read with Regulation 9 SEBI (Stock Brokers) Regulations, 1992.

D. Losses are covered by premium on sale of options and shown only at later stages

OD observed that Options were sold on behalf of the clients for taking further positions or making pay-outs (stated to be profit pay-outs), whenever there were debit balances in the client's ledger due to losses in the previous expiry period, which resulted in postponing disclosure/hiding of actual losses and thereby accumulation of heavy losses to investors over a period. As per Regulations 3(a) and 4(1) of PFUTP Regulations, no person should deal in securities in fraudulent manner or indulge in a manipulative, fraudulent or an unfair trade practice in securities markets, which was not adhered to by Noticee as alleged by OD. As per Clauses A(1), A(2) and A(5) of Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992, a registered broker should maintain integrity, exercise due skill and care and comply with statutory requirements, which was not done by Noticee as alleged by OD. Thus, Noticee allegedly violated Regulations 3(a) and 4(1) of PFUTP Regulations and Clauses A(1), A(2) and A(5) of Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

E. Delayed pay-in and late pay-in charges levied by member

OD observed that Noticee was charging for Late Pay-in from its clients for F&O exposure, but it could not produce any document evidencing specific consent from the investors for the same. The Clients' consent was received at the time of enrolment through Voluntary Clauses Agreement/ Additional Rights and Obligations for levying the rate of interest @ 24% per annum on debit balances. OD observed that the total charges levied including delayed payment charges/ late pay-in charges and Late Pay-in for F&O Exposure were in excess of the agreed 24% p.a. on debit balances. Further, OD noted that all the trading decisions were taken by Noticee and consent of the clients were obtained only post execution of trades, so that all the decisions including decision to make profit pay-outs by not retaining funds, decision to take further positions on behalf of the clients without seeking additional pay-ins from the clients

and the decision to charge delayed pay-in and Late pay-in for F&O exposure to the clients were taken by Noticee. Thus, OD observed that Noticee had executed the transactions on behalf of the clients, by encouraging clients to deal in securities, with the object of enhancing its brokerage and other charges. As per Regulations 4(2)(l) and (o) of PFUTP Regulations, a person's dealing in securities should be considered manipulative/ fraudulent/ unfair trade practice, if it is by an intermediary reporting transactions to it is clients in an inflated manner to enhance commission or if it is a fraudulent inducement of a person to deal with securities to enhance commission, which was not adhered to by Noticee as alleged by OD. As per Clauses (B)(4)(a) and (b) of the Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992, a registered broker should not encourage sales/purchase of securities with sole objective of earning commission or furnish false quotation or other information with objective of earning commission, which was not adhered to by Noticee as alleged by OD. Thus, Noticee allegedly violated Regulations 4(2)(l) and (o) of PFUTP Regulations and Clauses (B)(4)(a) and (b) of the Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

F. Non settlement of inactive clients for an amount of Rs 63,94,5432.85

Further, OD verified whether the clients' accounts were settled on monthly/quarterly basis as per preference given by the client, considering the ledger balances of clients across Exchanges/Segments and collaterals, cash maintained as margins with stock brokers against retention of client's obligation, cash market turnover and margin requirement. OD observed unsettled securities worth Rs 26,66,395.28 in one sample of 56 inactive clients, wherein seven instances were either settled or not required to be settled, and unsettled securities worth Rs 37,28,147.57 in another sample of 56 inactive clients (Statement of Accounts enclosed as **Annexure G** in CD). As per Clause 12e of SEBI Circular no SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, a client may specifically authorize the stock broker to maintain a running account, provided that 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, which was not done by Noticee as alleged by OD. Thus, Noticee allegedly violated Clause 12e of SEBI Circular no. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

G. Delay in uploading client details in Central Know Your Client (CKYC) system

OD verified Account Opening Form (Blank) in accordance with provisions of KYC, implementation of KYC circulars etc. OD observed that there was delay in uploading client details in CKYC system, for eight clients out of eight clients verified (details enclosed as **Annexure H** in CD). As per SEBI Circular no. CIR/MIRSD/66/2016 dated July 21, 2016, the registered intermediaries shall upload the KYC data with CKYC Registry, in respect of all individual accounts wherever KYC is required to be carried out as per the circulars issued by SEBI from time to time, which was not done by Noticee as alleged by OD. Thus, Noticee allegedly violated SEBI Circular no. CIR/MIRSD/66/2016 dated July 21, 2016.

H. No dedicated E-mail id for redressal of grievances

OD verified whether there was dedicated E-mail id for redressal of grievances. OD observed that Noticee did not have exclusive email id for the purpose of registering complaints by investors. Instead email ids dedicated by Noticee are being used for general communication and correspondence also. As per Clause 4 of SEBI circular no. MRD/DoP/Dep/SE/Cir-22/06 Dated December 18, 2006, all registered brokers are advised to designate an e-mail ID of the grievance redressal division/compliance officer for the purpose of registering complaints by investors, which was not done by Noticee as alleged by OD. Thus, Noticee allegedly violated Clause 4 of SEBI circular no. MRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006.

I. SMS alert facility flag not enabled in the Depository Participant Module (DPM) and Power of Attorney (PoA) activated without obtaining mobile number from the client

OD observed documents executed for PoA in favor of Stock Broker, Clauses of PoA, Registration of BO for SMS Alert facility for PoA etc. In eight instances, OD observed that SMS alert facility flag was not enabled in the DPM and in one instance PoA was activated without obtaining mobile number from the client. As per Point no 1.12 of SEBI Master Circular for Depositories no. SEBI/HO/MRD/DP/CIR/P/2016 /134 dated December 15, 2016, subscription to SMS Alert facility for depository accounts operated through PoA is mandatory, which was not done by Noticee as alleged by OD. Thus, Noticee allegedly violated Point no 1.12 of SEBI Master Circular for Depositories no. SEBI/HO/MRD/DP/CIR/P/2016 /134 dated December 15, 2016.

J. In 160 instances, securities with value of Rs. 5,41,502.76 were transferred from client demat to pro account

OD observed 160 instances (Demat statements enclosed as **Annexure I** in CD) where securities valued at Rs. 5,41,502.76 were transferred from client demat to pro account. As per Clause 2 of SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, brokers should keep separate accounts for clients' securities with necessary details, and keep such books of accounts, as may be necessary, to distinguish from Noticee's securities, which was not done by Noticee as alleged by OD. Thus, Noticee allegedly violated Clause 2 of SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993.

6. Vide email dated February 24, 2020, the Noticee inter alia stated that the CD containing the annexures to the SCN was received in broken condition and it requested for the copy of the annexures to be provided again. Further, it was also submitted that their correspondence address had changed and that their new address was – Aditya Birla Money Ltd, 2nd & 3rd Floor, SAI SAGAR, Plot No. M7, Thiru-Vi-Ka (SIDCO) Industrial Estate, Guindy, Chennai-600032. In response, vide letter dated February 26, 2020, CD containing copy of the annexures to the SCN was sent to the Noticee. Vide email dated March 09, 2020, the Noticee requested for extension of time till April 09, 2020 to submit reply to the SCN. Subsequently, vide email dated March 17, 2020, Noticee requested for extension of time till June 09, 2020 to submit reply to the SCN due to the pandemic situation. Thereafter, vide email dated June 09, 2020, Noticee requested for extension of time till July 09, 2020 to submit its reply to the SCN owing to the pandemic situation. Vide email dated June 09, 2020, the request of the Noticee was acceded to and further the Noticee was granted an opportunity of personal hearing in the matter on July 15, 2020. Vide letter dated July 05, 2020, the Noticee submitted its reply to the SCN. The main submissions made therein are reproduced below –

Introduction:

At the outset, we deny the adverse observations in the Inspection Report. It is submitted that, we do not accept or admit anything stated in the Inspection Report except where the same is expressly admitted i this reply. Nothing stated therein shall be deemed to be admitted by us merely on account of no traverse and unless the same is specifically admitted by us herein.

Response to allegation in Clause 4 A:

A. Unauthorised Trading and Portfolio Management Services to Unregistered PMS Clients:

1. *At the outset we submit that OD observation is incorrect and we have never handled any PM accounts as alleged or otherwise except approved PMS relationship under PM Regulations SEBI. As trading members, we are required to execute the transactions as per the instructions the clients. These instructions can be in the form of calls originating from the clients or o dealers calling to disseminate research calls. Several regulations including SEBI's code of conduct for Stock Brokers effectively permit such transactions*.

2. *Attention of SEBI is drawn to clause B of the Code of Conduct for Stock Brokers read with Regulation 9 of Securities and Exchange Board of India (Stock-Brokers and Sub-Broker Regulations, 1992 which quote as under:*

   "(4) Business and Commission:

   (a) *A stock-broker shall not encourage sales or purchases of securities with the sole object o generating brokerage or commission.*

   (b) *A stock-broker shall not furnish false or misleading quotations or give any other false or misleading advice or information to the clients with a view of inducing him to do business i particular securities and enabling himself to earn brokerage or commission thereby."*

   The above two clauses clearly substantiate that otherwise than the above two reasons, a stock broker may disseminate research recommendations to its clients and it is up to the client to accept such research recommendations and decide to place orders basis the same. It is genera market practice of most leading brokers to provide research recommendations to clients and transactions are executed based on the acceptance of such recommendations. In case where the clients deny or do not wish to execute transactions our dealers refrain from executing any trades. Admittedly in the current case there are voice recordings to substantiate that client have accorded their consent to our research recommendations and therefore the allegation that we have been carrying out PMS activities by suggesting the clients to execute certain transactions is incorrect.

3. *Further to regulate the process of advising the clients with their investment decisions, SEBI implemented Securities and Exchange Board of India (Investment Advisers) Regulations, 2013. Regulation 4(g) specifically exempts stock brokers and sub-brokers from registering a Investment Advisors as it appreciates that they are adequately regulated by Stock Broker and Sub-Broker regulations while they provide research recommendations to their clients of executing trades and therefore all trades carried out by clients, whether out of their own research or as per the research recommendations of the brokers are all valid trades of the clients and cannot be*

categorised as trades executed under a portfolio management arrangement as wrongly alleged in findings of the inspection.

4. *We would like to submit the fact that out of total sample of 184 instances, the inspection official have observed 36 instances wherein the trade confirmations were not available and 16 case where post trade confirmation were available. We had submitted detailed case by case reply along with Annexures to the Inspection Report — Annexure B wherein we have provided voice logs and emails received from all 36 clients to prove that the transactions were actually authorised by clients. The said reply along with Annexures 32 - 63 shall be treated part and parcel of this reply and is not repeated in the interest of brevity.*

5. *The above submissions would go to prove that we have not rendered any portfolio management services to its clients. Trading was carried out by the respective client in his / her trading account and was actively participating in decision making as could be made out from the voice log pertaining to calls exchanged with clients before orders were placed. We have provided research recommendations, which are incidental to our business and basis client consent orders were placed.*

6. *We would like to further submit that we had been giving research recommendations incidental! our business and clients were executing transactions basis the same. We were carrying out the transactions as desired by clients i.e. executing orders as specified by our clients. As such the same cannot be termed as Portfolio Management Services.*

7. *Further it is a market practice of almost all leading market participants to offer research recommendations to clients for assisting them with trading. Such schemes are published and widely promoted. Flyers, website extracts, broachers of some leading brokers publicizing their services of giving research recommendations are annexed herewith for ready reference as Annexure 1.*

Reg. / Sec. No.	*Regulation*	*Explanation*
A(1)	*Integrity: A stock broker shall maintain high standards of integrity, promptitude and fairness in the conduct of all his busines.*	*We have conducted our business with high standards of integrity, promptitude and fairness.* *Trades were affected by the respective clients and hence have confirmed the trades We have also sent SMS, contract notes margin statements, statement of accounts demat statements etc. to clients which will clearly provide details of the transaction effected in their accounts.* *Clients have also confirmed the transaction effected in their accounts which has been acknowledged in the inspection report as well as the SCN.* *As such it cannot be alleged that we have violated Clause A(1) of the Code of Conduct.*

A(2)	*Exercise of Due Skill & Care: A stock broker shall act with due skill, care and diligence in the conduct of all his business.*	*None of the allegations contained in the SCN attract this Clause.* *In fact, we have acted as per the then prevailing statutory guidelines and have provided contract notes, margin statements, statement of accounts and demat statements to all customers.* *We have in addition taken confirmation on trades as well as have sent SMS with respect to orders placed/ trades executed in the accounts of the clients on an immediate/ day end basis.* *No Client has found the transactions to be incorrect and therefore it can be construed that the transactions were carried out with due skill and care. Reckless transactions without care would have surely resulted in complaints.* *As such cannot be alleged to have violated Clause A(2) of the Code of Conduct.*
A(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*	*The submissions made above would clearly go to prove that we have been in compliance of all the provisions of Act, Rules, Regulation issued by Government, SEBI and Stock Exchanges as applicable to Stock Brokers.* *In the absence of specific regulation / guideline with respect to placement of order through dealing terminals, it cannot b alleged that we are in violation of Clause A (5) of the Code of Conduct.* *We therefore submit that we have no violated Clause A (5) of the Code of Conduct.*
B(7)	*Investment Advice: A stock broker shall not make a recommendation to any client who might be expected to rely thereon to acquire, dispose of, retain any securities unless he has reasonable grounds for believing that the recommendation is suitable for such a client upon basis of the facts, if disclosed by such a client as to his own security holdings, financial situation and objectives of such investment.*	*Violation of Clause B (7) has never been alleged / made in the inspection repo However the same has been inferred for the first time in this SCN which in itself is an anomaly as the SCN is based on the inspection findings and report. SCN cannot seek to improve upon the violations factored in the inspection report. The SCN does n t provide any reason, which attracts the clause.* *It can be observed from the call records that the clients are provided research recommendations based on their choice of selection of segment of trading for which detailed Risk Disclosure Document is share with them. These research recommendations are only given to clients to whom they are suitable and therefore the allegation does not hold good.* *Moreover we would like to submit that none of the clients have preferred to file complaint either directly with us or with SEBI / Exchanges which goes on to prove that they were not aggrieved with the research recommendations (if any) made to the during the course of their transactions with us.*

14(1)	*Contract with client and disclosures* *The portfolio manager shall, before taking up an assignment of management of funds or portfolio of securities on behalf of a client, enter into an agreement in writing with such client clearly defining the inter se relationship, and setting out their mutual rights, liabilities and obligations relating to management of funds or portfolio of securities containing the details as specified in Schedule IV*	*The above submissions as well as the submission made by us in our reply to the Inspection Report would go to prove that we had offered only stock broking services and never intended to offer portfolio management services. Letters were obtained from sample 20 clients where they have stated that they never availed portfolio management services from us. We ca produce more letters for clients selected by SEBI.* *So when client and broker both deny of an PMS arrangement, SEBI cannot unilaterally conclude that the transactions are under PMS.* *As such we are not in violation of Regulation 14 (1) (a) of the Portfolio Management Regulations 1993.*

8. *We would like to submit that we are not in violation of 14 (1) (a) of Portfolio Manage Regulations, clause A(l), (2), (5) and B (7) of Code of Conduct specified in Schedule ll read with Regulation 9 of SEBI (Stock Brokers and Sub- Brokers) Regulations, 1992 and SEBI circular and SEBl /HO/MlRSD/DOP1/ClR/P/2018/54 dated March 22, 2018.* ***In fact, even the inspection reprt does not specify any violation of Clause B (7) of the Code of Conduct. However, the same has been included for the first time in this SCN.***

   Further with respect to twenty complaints referred by SEBI we would like to submit as under:

9. *During the period covered under inspection, 77460 clients transacted with us only 403 queries complaints were received by us. Most of these queries / complaints pertain to technical issue like service defaults / others and has nothing to do with unauthorised trades and mis-appropriation of funds and securities. Further of the 20 complaints scrutinised by SEBI, only clients have preferred to file complain with Exchanges. Other 18 clients were satisfied with our response and have not chosen to escalate their grievance with the Exchanges.*

10. *Of the remaining two complainants Ms. Namrata Rai preferred to escalate her grievance to the Exchange. Her complaint was disposed of by the IGRP of the Exchange without any admission of claim. Ms. Namrata Rai did not prefer to challenge the findings of the IGRP thus substantiating that the case did not have any merit so as to be categorised as a complaint for unauthorised trade or misappropriation of funds and securities as alleged in your show cause notice. Extract of status of complaint from NSE website is filed herewith as Annexure 2.*

11. *Ms. Aarti Kathuria filed arbitration against us at NSE. The Hon'ble Arbitrator of NSE disposed of the matter rejecting her claim. This effectively means that her claim has been tested by the Arbitrator of the Exchange and he did not find any merit so as to categorise the trades a unauthorised or misappropriation of funds and securities as alleged in the Notice. Extract o status of arbitration from NSE website is filed herewith as Annexure 3.*

12. *Based on the fact that all 20 samples selected by SEB! were closed in our favour without an escalation or admission of claim, no adverse inference can be drawn against us and th allegation of unauthorized trades or misappropriation of funds and securities is completel misplaced. We would like to further submit that we had given detailed explanation against each and every allegation contained in Clause 4 A.*

Without prejudice to the foregoing we would like to offer our reply to the observations in the Notice as under:

13. *In response to Clause 4. A. a. we submit that of the 13 clients, one client namely Mr. Chandrakanth Londe did not execute any transaction with us and therefore SEBI has neither found pre-order instruction nor post trade confirmation. If there is no trade, then there cannot be any pre-trade instruction or post trade confirmation. For all other 12 clients trade confirmations were available.*

14. *Requirement of maintenance of pre-order confirmation was put into place in September 2016 and the same was made effective from 01 April 2018. However even before the requirement of maintenance of pre-order confirmation, SEBI came up with a clarification circular dated 30 November 2017 where it appreciated the possibility of non-availability evidence of order placement and in such case, if the clients raised a dispute, then the same was to be dealt as per the below clause:*

"The above mentioned SEBI circular also prescribes that 'when dispute arises, the burden of proof will be on the broker to produce the above records for the dispute trades'. However for exceptional cases such as technical failure etc. where broke fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt / payment of funds / securities by client in respect of disputed trade, etc. shall also be considered".

15. *The above clause appreciates the possibility of non-availability of evidence of order placement. Only in case of dispute it is to be dealt as per the aforesaid clause. Of the 1 complaints 11 complaints did not even reach the stage of dispute and the other were decided—in our favour by IGRP and Hon'ble Arbitrator of the Exchange. Therefore, our compliance has been tested and found to be adequate so as to decide the matters in our favour*

16. *Even further of the 12 complaints 9 complaints pertain to transactions executed prior to April 01, 2018. Only 3 complaints i.e. that of Ms. Kajal Hazra, Ms. Aarti Khaturia and Mr Manoj Rathod had transactions post April 01, 2018 and all were closed in our favour.*

17. *In response to Clause 4. A. b. we submit that the allegations are misplaced for the reason aforesaid. It is denied that we have carried out any Portfolio Management Services. We would like to submit that the alleged transaction has been initiated by the client and the same was also duly acknowledged by him at the end of the day. Voice logger pertaining to the day end confirmation by the client was submitted at the time of Inspection. Transcript of the voice log is enclosed as Annexure 4 for your kind reference, wherein the client had no objected the transaction. Moreover, the transactions were effected prior to the implementation of SEBI Circular dated March 22, 2013 and as such the requirement of keeping evidence of client placing order does not arise.*

18. *The statement in Clause 4. A. c, is self-contradictory i.e. if it is a discretionary transaction, then the instruction from the client would not have been required. The fact that we obtained instructions from the respective clients goes on to substantiate that these were not discretionary trades. We would like to submit that the dealer had taken confirmation from client before placing the order, wherein it is to be noted that client has provided his decision to place the order. Further we herewith enclose few voice logs as Annexure 5, wherein the client Mr. Manoj Rathore is directing the dealer for placement of orders and the transactions were effected as per his directions only. This would go to prove that the client was the one who had been taking investment decisions and cannot be considered as Portfolio Management Service.*

19. *In response to Clause 4.A d we submit that we get revenues from clients only on execution of transactions. If our intentions were to execute unauthorized trades, our dealer would have been better off executing such trades without the knowledge of the client rather than refraining to transact in the interest of the client. This goes on to substantiate the following:*

    a. *We have only acted in the interest of the clients even at the cost of our revenues.*
    b. *We did not execute any transaction without the instruction of the client.*

20. *With regards to the guidance of keeping the positions open, it was merely recommendation as permitted under Stock Broker Regulations and was not with the sole intention of generating brokerage and therefore, not in violation of any requirements of SEBI.*

21. *We would like to further submit that the alleged transaction has been initiated by the client and the same was also duly acknowledged by him at the end of the day. Voice*

logger pertaining to the day end confirmation by the client was submitted at the time of Inspection. Further, it is also to be kindly noted that the dealer was only expressing his views on market conditions as requested by the client in the call. Further, we herewith enclose few voice logs as ***Annexure 6****, wherein the client Mr. Jatin Pandey is directing the dealer for placement of orders and the transactions were effected as per his directions only. Mr. Jatin Pandey had also traded through internet. Internet access logs pertaining to the same is filled herewith as* ***Annexure 7****. This would go to prove that the client was the one who had been taking investment decisions and it cannot be considered as Portfolio Management services. It is to be noted that the disputed transaction was executed before the implementation of SEBI Circular dated March 22, 2018 and as such the requirement to maintain evidence of client placing orders does not arise. The client continued to trade even after the disputed transaction period.*

22. *In response to Clause 4.A.e. we submit that the voice log clearly bring out the fact that the client had placed orders and he was following up on the status of transactions effected by him and the dealer is explaining the net impact of the transactions effected by the client. There was no reference of generating more profit. This voice log is being considered in isolation and earlier voice logs are not taken into account. Therefore, the conclusion drawn in the show cause notice is erroneous. We would like to further state that the client basis the explanation provided by the customer care department official has withdrawn the complaint which has been duly recorded in the reply mail dated March 29, 2018 sent to client. The same is filed herewith as* ***Annexure 8****. Further we had submitted few voice logs wherein the client Mr. Sanjay Gupta is seen directing the dealer for placement of orders and that the transactions were effected as per the client's directions only. This would go to prove that the client was the one who had been taking investment decisions and cannot be considered as Protfolio Management Service. However, the same was not taken into account by the OD. Hence the voice logs are once again produced herewith as* ***Annexure 9****. The disputed transactions were prior to the implementation of SEBI Circular dated March 22, 2018 and as such the requirement of maintaining evidence of client placing the order does not arise.*

23. *In response Clause 4.A.f as a matter of caution and industry best practice, with an intention to maintain strict vigil over our dealers and authorized persons, our central surveillance team effects trade confirmation calls to clients. In these seven instances, the show cause notice admittedly accepts that the clients had confirmed having executed such trades during the trade confirmation calls. The fact that the clients did not escalate their complaint provisions beyond doubt that they were satisfied with the reply and therefore the allegation of unauthorised trades, misappropriation of funds and securities and unauthorized PMS does not hold good. Observation transpires from emails sent by us to our clients wherein a part of it quotes "In addition to that you have also continued to provide confirmations on trade confirmation calls and have been actively participating in the decision making process." Based on this clause it*

is alleged that client was not the only person who was taking decision with respect to trades and further alleged that we have tried to validate trades after executing them. We submit that the said clause no way substantiates the conclusions arrived by SEBI. The sentence begins from the words "In addition" which means that the trade confirmation calls are in addition to trading instructions and not exclusive confirmation done after executing the trades. In fact, the conversation pertains to an instance where the client executed trades and we complied with all the requirements inter-alia including sending contract notes, daily margin statements, SMS etc.so the client was appropriate! replied that he has received all these emails and SMS and additionally he has also confirmed the trades on trade confirmation calls. The said conversation no way suggests our involvement in the decision making process as wrongly concluded by SEBI. Out of seven complaints, in 5 complaints, the disputed transactions were effected prior to the implementation of SEBI Circular dated March 22, 2018. The same can be inferred from the complaint letters of the respective complainants shared by SEBI vide Annexure D to this SCN.

24. *Further 11 clients out of these 20 clients continued to execute transactions even after the date of disputed trades, which goes on to substantiate that they were fully satisfied with our services and there was not case of unauthorised trades, misappropriation of funds and securities and unauthorized PMS as alleged. Contract Notes pertaining to the transaction effected by the said 11complainants are filed herewith as* ***Annexure 10****.*

25. *We have been alleged to have been violated 14 (1) (A) of PM Regulations that mandates that we should enter into an agreement with clients before offering PMS. In the current case, we have not offered Portfolio Management Services to any of these 20 clients and therefor enter in into an agreement for offering PMS does not arise.*

26. *We have also offered completely valid reasons to substantiate that the trades were neither unauthorized nor there was any misappropriation of funds and securities. The allegation of having violated clause A (1), (2), (5) and B (7) of Code of Conduct of Broker relating to high standard of integrity, exercise due skill and care, comply with statutory requirements and should not share research recommendations to clients in ordinary circumstances are derived from the incorrect allegations of unauthorized trades and misappropriation of funds and securities. As these allegations do not hold good, the allegation of violating Clause A (1), (2), (5) and B (7) of Code of Conduct of Broker of the Code of Conduct also fails.*

27. *The circular dated March 22, 2018 appreciates the possibility of non-availability of evidence of order instructions and has prescribed various other modes to arrive at a conclusion in case of a dispute. In the current case, it is alleged that pre-order instructions was not available for 13 clients of which post trade confirmations were available for 2 clients.*

28. *11 of these 13 clients have not preferred any complaint with Exchanges, thus substantiating that the transactions were authorized and legal.*

29. *Only 2 clients- have preferred to dispute the transactions and all the trades of these 2 clients were found to be authorized by competent authorities like IGRP and Arbitral Tribunal of Exchange.*

30. *With regards to other 18 clients, the cases have not even reached the stage of dispute.*

31. *Without prejudice to the above, only 3 complaints of 13 complaints pertain to transactions executed after April 01, 2018 i.e. the date from which the circular was made effective. Details of the other complaints are given below:*

Client Code	*Name of the Client*	*Disputed Transaction Date*	*Whether traded after disputed*
1045854	*Venkata Nagaganesh Pushadapu*	*April24, 2017*	*Yes*
1048956	*Krishnakishore Myneni*	*February 2017*	*No*
1044322	*Mool Chand Gupta*	*FY16-17*	*No*
1043942	*Jatin Pandey*	*June 2017*	*Yes*
1052977	*Namrata Rai*	*February 2018*	*Yes*
1055351	*Tarun Dora*	*FY 17-18*	*Yes*
3005137	*Saniay Gupta*	*March 26, 2018*	*No*
1048159	*Rathod Shailesh Pravin*	*August 08, 2016*	*No*

32. *It may be appreciated that few recordings may not be available due to technical reasons and such non availability cannot be a reason to categorize the trades as unauthorized.*

33. *In light of the foregoing we reiterate that we have not violated the circular dated March 22, 2018.*

34. *We hereby humbly submit that our submission made vide our reply dated July 2, 2019 was not considered while issuing notice, as we have provided a case wise analysis of the observations raised by the Inspection officials. The same along with the Annexures thereto may be treated as part of this reply and is not repeated in the interest of brevity.*

Reg./Sec. No.	*Regulation*	*Explanation*
A(1)	*Integrity: A stock broker shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.*	*We have conducted our business with high standard high standards of integrity, promptitude and fairness.* *We have sent SMS, contract notes, margin statements, statement of accounts, demat statements etc. to clients*

		which will clearly provide details of the transactions effected in their accounts. *We have dealt with the complaints of these clients as per the guidelines of SEBI/ Exchanges and the clients has also accepted the resolutions.* *Only 2 clients preferred an IGRC and no adverse inference has been drawn against us in any of these complaints.* *As such it cannot be alleged that we have violated Clause A(1) of the Code of Conduct.*
A(2)	*Exercise of Due Skill & Care: A stock broker shall act with due skill, care and diligence in the conduct of all his business.*	*None of the allegations contained in the Set attract this Clause.* *In fact, we have acted as per the then prevailing statutory guidelines and have provided contract notes, margin statements statement of accounts and demat statement to all customers.* *We have in addition taken confirmations or trades as well as have sent SMS with respect to orders placed / trades executed in the accounts of the clients on an immediate / day end basis and the clients have also accepted the resolutions provided by us.* *In two instances, the Learned Investor Grievance Panel Member as well the Hon'ble Arbitrator appointed under the aegis of Exchange Regulations have disallowed the claims of the respective clients which will again go to prove that we have exercised due skill and care in providing broking services to our clients.* *As such it cannot be alleged that we have violated Clause A(2) of the code of conduct.*
A(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*	*The submissions made above would clearly go to prove that we have been in compliance of all the provisions of Act, Rules, Regulation issued by Government, SEBI and Stock Exchanges as applicable to Stock Brokers.* *All instances of complaints were prior to implementation of direction of maintaining pre-order instruction, but we have adequately satisfied the clients as well as IGRC and Arbitral Panel wherever applicable and therefore all matters have been satisfactorily decided in our favour.* *In the absence of specific regulation guideline with respect to placement of order through dealing terminals at the relevant time, it cannot be alleged that we are in violation of Clause A (5) of the Code of Conduct.* *We therefore submit that we have not violated Clause A (5) of the Code of Conduct.*

B(7)	*Investment Advice: A stock broker shall not make a recommendation to any client who might be expected to rely thereon to acquire, dispose of, retain any securities unless he has reasonable grounds for believing that the recommendation is suitable for such a client upon basis of the facts, if disclosed by such a client as to his own security holdings, financial situation and objectives of such investment.*	*Same as above*
14 (1) (a)	*Contract with client and disclosures* *The portfolio manager shall, before taking up an assignment of management of funds or portfolio of securities on behalf of a client, enter into an agreement in writing with such client clearly defining the inter se relationship, and setting out their mutual rights, liabilities and obligations relating to management of funds or portfolio of securities containing the details as specified in Schedule IV*	*Same as above*

B. Lack of adequate systems and Internal Control

35. *At the outset we hereby submit that the terminals of the Exchanges are provided for executing trades and there is no specific purpose for which they should be dedicated. No law provides that client's trades should not be carried out from the terminals that are used for executing trades c f PMS clients. We therefore submit that the observation is incorrect and cannot hold good.*

36. *With regards to Annexure E, we submit that upon the visit of inspecting officials at our office situated at 10th Floor, R-Tech Park, Nirlon Complex, Off Western Express Highway, Goregaon (E) Mumbai- 400063, we were called upon to describe the purpose of each terminal and we specified the same way of adding a column "segment". This declaration of' purpose of each terminal was on the date of visit and not for historical transactions. SEBI has wrongly applied the segregation to historical transactions to support its baseless allegation of offering Portfolio Management Service without entering into an agreement for the said purpose.*

37. *Without prejudice to the above we submit that Mr. Jignesh Shah was dealing for retail clients till May 2019. He was then requested to deal for PMS clients as a back-up dealer. As such he had place orders for the following 3 clients who had been availing our NDPMS services at that point of time. Transfer letter of Mr. Jignesh Shah is filed herewith as* ***Annexure 11****.*

Name	*PAN*
Madhu Rajesh Agrawal	*AABPA6568L*
ShashiKuldeep Dawar	*AAUPD9369H*
Sandeep Vasant Dadia	*AACPD0664M*

38. *For the balance 43 clients we had submitted the letters from these clients confirming that their trades were not executed by us at our own discretion and that they have executed all the trades by themselves. This submission duly confirmed by the clients has been completely ignored and as suet we once again attach the letter from the clients as Annexure 12.*

39. *Further pre order instructions and post order confirmations of several clients are submitted to SEB during inspection and also with our earlier reply which have also been completely ignored. If these were PMS clients as alleged, then they would not have issued such letters or given order instructions and accept trade confirmations.*

40. *We had in the foregoing paragraphs have clearly explained that since the unauthorized trade complaints against us were false and fabricated, the IGRP and Arbitral Panels of the Exchange decided them in our favour.*

41. *We therefore reiterate that the conclusion of SEBI that since certain clients trades were executed on terminals which were also used to execute trades of PMS clients and as such all the trades are PMS trades is untenable. As such we would like to submit that we are not in violation of clause A (1) and A (2) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-brokers) Regulations,1992.*

42. *Allegations in Clause 4.C, D, & E pertain to KTM investors. Response to these clauses will have some common explanations and some specific explanations for each clause. In the interest of brevity, common explanations are submitted hereunder followed by individual explanations to each clause.*

    1. *KTM investors was a group of 6 entities.*
    2. *KTM investors started transacting through us from July 2010.*
    3. *KTM investors suffered losses and preferred to file a complaint with SEBI, disputing all the transactions executed upto December 31, 2015.*
    4. *Based on the complaint SEBI conducted an inspection of our books of accounts and records and vide letter dated October 04, 2018 SEBI directed NSE to initiate IGRP proceedings.*
    5. *Under the direction of SEBI, NSE conducted the IGRP proceedings where 3 Independent, High Learned and Experienced IGRP members, appointed by NSE under the scheme of SEBI, examine the allegations of KTM investors.*

6. *All 3 IGRP members unanimously concluded that there was absolutely no merit in the complaints of KTM investors and did not admit any claim against us.*
7. *Being aggrieved with the decision of the IGRP members, KTM investors preferred to initiate arbitral proceedings and these proceedings were heard by an elite panel of 3 arbitrate including an ex-High Court Judge. The 3 arbitrators were Hon'ble Retd. Justice Surendra Naha Ranade and Hon'ble Retd. Justice AS Aguair and Ms. Medha Joshi (Retd. CGM of IDBI Bank).*
8. *It is pertinent to note that the panel comprised of 2 members selected by KTM investors and member selected by NSE.*
9. *This esteemed panel of 3 arbitrators also did not find any merit in the allegations of KTM investors and decided all 6 cases in our favour.*
10. *The allegations in Clause 4 C, D & E of the Show Cause Notir.e are a subset of the allegations o KTM investors which have been dealt with and decided in our favour unanimously by Independent, Highly Learned and Experienced IGRP members and Arbitrators and therefore the allegations of SEBI may be set aside without going into further merits.*

Without prejudice to the above submissions, we offer our explanation to individual clauses of the SCN.

C. Misleading the clients by understating losses and overstating profits:

43. *As brokers and agents, we are required to furnish contract notes, daily margin statements, ledgers register of securities etc. from time to time and it is the clients responsibility to record the transactions and arrive at profits and losses based on the information received from aforesaid documents. However, since many clients have requirements of these reports, we have provided facilities in our back office software using which the clients can generate the profit and loss statements themselves.*

44. *We also volunteer to provide physical P&L statements to select clients who have large portfolios and similar statements were provided to KTM investors. Copies of duly acknowledged P&L statement supplied to KTM investors are annexed herewith and marked as Annexure 13.*

45. *It is grossly denied that we have provided various statements to KTM investors claiming to be profit and loss statements, which were at a variance with actual positions and had understated the losses and shown fictitious I overstated profits and concealed the material facts and gave false statement to the clients. Certain statements were shared with KTM investors as per the method suggested b KTM investors and the same was also substantiated to the IGRP of the NSE which was constituted the direction of SEBI. In Observation 13 of the IGRP order "TM provided P&L statements to the complainant in the format suggested by the complainant, which did not reflect M to M losses. The format was different from the regular format used by the TM. Variations in these two versions P&L were clarified by the TM from time to time to the satisfaction of the complainant and this has been confirmed by*

complainant as could be observed from signature of the complainant with remark 'ok'". Further in several such statements, KTM investors accepted that these will be different from the P& L Statements and in one statement, it is also recorded that the differences have been explained to him to his satisfaction several times. A sample copy of one such statement is annexed herewith and marked as Annexure 14.

Moreover, these documents do not come under the purview of SEBI or Regulations thereunder a SEBI has not prescribed any format for these documents. On the other hand, these documents were verified, tested and accepted by 6 Independent, Highly learned and Experienced IGRP members and Arbitrators and therefore the allegations of SEBI with respect to profit pay outs/ providing documents which are at variance with the actual positions may be set aside without going into further merits.

Further SEBI has not taken into account the fact that KTM investors have been served with profit and loss statements for all the years covering all the transactions wherein the correct profit and losses have been reflected and that the same has been acknowledged by KTM investors from time to time. This would clearly negate the allegation that we have concealed material facts and gave false statements to KTM investors. We had extensively filed all communications and document including duly acknowledged Profit and loss statements, duly acknowledged Statement of Accounts Mails pertaining to profit and loss calculations, explanations offered on Profit and loss calculations Payouts etc. and acknowledgement thereof by KTM investors were filed as Annexures 16- 18, 26-29 & 44 etc. to the reply to the Inspection Report- Annexure A and we pray that the same be referred to.

46. *We therefore reiterate that we have not provided statements to investors claiming to be profit and loss statements, which were at a variance with actual positions and had understated the losses and shown fictitious I overstated profits and concealed the material facts and gave false statements the clients as alleged or at all and all such statements were provided only as per the request and as per the method suggested by KTM investors.*

47. *It is denied that Pay-outs were made to KTM investors, claiming them to be profit pay-outs, when the investors were actually making losses. Pay-outs are made to clients based on the availability of releasable amount.in client's accounts. KTM investors used to sell options as a result of which the credits were received from the Exchanges. The margins were deposited in the form of shares and therefore the amount received from the Exchanges was rightly released as and when requested. At times when the amount could not be released, the same was denied. Further it is grossly denied that payments were labelled as profit pay-outs by us.*

48. *Similar allegations were made by KTM investors in their complaints to SEBI. In its letter dated October 4, 2018 SEBI claims to have independently examined the complaints and noted that*

"... Options contract were sold on behalf of the clients for making pay-outs (stated to be pro 't pay-outs), whenever there were debit balance in the client's ledger due to losses in the previous expiry period. This resulted in postponing disclosure / hiding of actual losses and accumulation heavy losses to investors over the period."

49. *The above statement was unilaterally made by SEBI without allowing an opportunity to us to put- forth our stand. SEBI also suggested that IGRP of the Exchange may re-examine the complaints of investors keeping the same things in view.*

50. *The Exchange appointed 3 independent members to constitute the IGRP and the panel of these independent, highly learned and experienced IGRP members did not find any merit in the said allegation and therefore dismissed the complaint of KTM investors while rejecting their claim.*

51. *The findings of IGRP were further tested by a panel of 3 independent Arbitrators of which, two were ex-judges and one was a market expert who had retired from IDBI. The Arbitral panel upheld the orders of IGRP and KTM investors have accepted it.*

52. *Further KTM investors were very clear in their approach to profits and losses in their accounts. They were also aware that pay-outs are issued towards Options Premium Credits also and therefore in minutes of meeting between our official, Kamlesh Mody and Mr. Ketan (Accountant of Mr. Mody dated 23/3/15 it was recorded that Mr. Ketan should record the reason for pay out as to whether it was option premium or profit pay-out. This goes on to prove that KTM investors did not consider al pay-outs as profit pay-outs and in-fact maintained a record of type of pay-out themselves. A copy of minutes of meeting dated 23/3/15 is annexed herewith and marked as Annexure 15.*

53. *In the email dated 27/3/15 Mr. Kamlesh Mody of KTM investors wrote to our officials. The said mail demonstrates the following:*

    a. *There was a separate method for calculation of suggested by KTM investors.*

    b. *Pay-outs would be done either for profits or for option credit selling.*

    A copy of email dated 27/3/15 is annexed herewith and marked as ***Annexure 16****.*

54. *In another letter dated 28/3/15 KTM investor clarified some important points with our official. Mr. Kamlesh Mody himself records that P&L statements are showing variation as they are calculations as per ledger and MTM of open positions and therefore directed his accountant not to record the same in tally. He also clarified that final P&L will be given once positions closed, which goes on to substantiate that KTM investors were fully aware that when options credits are recorded in ledger the debits will reduce, but these are not final. So the allegation that KTM investors were getting*

*misguided due to credit on sale of options is grossly incorrect. A copy of the said letter is annexed herewith and marked as **Annexure 17**.*

55. *In light of the aforesaid it is denied that multiple statement represented as profit and loss statements were provided to KTM investors which are at variance with actual positions is false and misleading. It is submitted that the profit and loss statements which were shared with KTM investors were confirmed by them from time to time and these profit and loss statements cover all the losses sustained by KTM investors. Thus it is incorrect to suggest that KTM investors were led to believe that they were in profits. In addition to refit and loss statements, Mr. Kamlesh Mody had requested us to provide certain statements which were required to be prepared as per the method suggested by him.*

56. *Even the IGRP (constituted basis directions of SEBI) that examined the complaints of KTM investors has clearly stated that*

a. At Observation 11 of IGRP Order dated December 26, 2018 the panel recorded "It observed that the complainant was kept informed by the TM about the debit balances in the complainant's account through various statements such as P&L statements, margin statement and communication dt. December 10, 2015 which was acknowledged by the Complainant". This remark was based on the P&L statements, Margin Statements and other communications samples, which were filed as part of the reply to the inspection report.

b. At Observation 12 of IGRP Order dated December 26, 2018 the panel recorded "It observed that the TM has followed existing guidelines prescribed by the regulatory authorities, while executing disputed trades".

c. At Observation 13 of IGRP Order dated December 26, 2018 the panel recorded "T provided P&L statements to the complainant in the format suggested by the complainant which did not reflect M to M losses. This format was different from the regular format use by the TM. Variations in these two versions of P&L were clarified by the TM from time to time to the satisfaction of the complainant and this has been confirmed by complainant a could be observed from signature of the complainant with remark 'ok". This remark was based on the statements duly acknowledged while accepting the reasons for difference therein and other communications samples which were filed as part of the reply to the inspection report.

d. At Observation 14 of IGRP Order dated December 26, 2018 the panel recorded "It was als observed that the complainant has accepted various ledger statements and P&L statement from time to time by affixing the signature." This remark was based on the ledge statements and P&L statements which were filed as part of the reply to the inspection report.

57. *Taking a holistic view of the entire matter, the Independently Highly learned and experience Arbitral Tribunal of NSE had upheld the findings of IGRP while rejecting the claim of KTM investors. We would like to further submit that the allegations with respect to violation of PFUTP Regulation and Code of Conduct mentioned in Schedule II read with Reg. 9 of SEBI (Stock Broker) Regulation, 1992 are misplaced for the reasons given hereunder:*

Reg./ Sec. No.	*Regulation*	*Explanation*
3	*No person shall directly or indirectly -*	
3 (a)	*buy, sell or otherwise deal in securities in fraudulent manner;*	*None of our acts can be categorised as fraud under Reg. 2(1)(c) as all the documents stipulated by SEBI/ Exchanges have been shared with KTM investors. Over and above the same, SMS pertaining to orders placed, trades executed, profit and loss statements reflecting actual pay-outs, charges etc. have been served and were duly acknowledged by KTM investors.* *Proof of KTM investors seeking calculations in a different format is also on record which will go to prove that we have been transparent in all our dealings with KTM investors.* *In fact, 6 independent, Highly Learned and Experienced IGRP members and members of Arbitral Tribunal have unanimously dismissed the allegations of KTM investors with respect to fraud or fraudulent transactions or unfair trade practices, while rejecting their claims.* *As a result we cannot be said to have violated Regulation 3(a).*
4(1)	*Without prejudice to the provisions of Regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*	*None of our acts can be said to have been in the form of a manipulative or deceptive device or in contravention to the provisions of the Act, rules or regulations of SEBI.* *As aforesaid, all our trades are genuine, bonafide and not at all manipulative or deceptive nor are a part of any contrivance and were done basis the directions of KTM investors.* *In fact, 6 independent, Highly Learned and Experienced IGRP members and members of Arbitral Tribunal have unanimously dismissed the allegations of KTM investors with respect to fraud or fraudulent transactions or unfair trade practices, while rejecting their claims.* *As such we are not in violation of Clause 4(1) of PFUTP Regulations.*
4(2)	*Dealing in securities shall be deemed to be a fraudulent or unfair trade practice if it involves fraud and may include all or any of the following, namely;*	*The SCN fails to established that KTM Investors were defrauded by us for the reasons aforesaid.* *In fact, 6 independent, Highly Learned and Experienced IGRP members and members of Arbitral Tribunal have unanimously dismissed the allegations of KTM investors with respect to fraud or fraudulent transactions or unfair trade practices, while rejecting their claims.* *As such we are not in violation of Clause 4(2) of PFUTP Regulations.*
4(2)(l)	*An intermediary reporting trading transactions to his clients entered into on their behalf in an inflated manner in order to increase his commission and brokerage;*	*This clause is application in case where intermediaries report trading transactions in an inflated manner i.e. by inflating either the quantity or the price at which transactions have taken place to increase the brokerage.* *The SCN does not even allege of such an activity and therefore, the question of violation of Clause 4(2)(l) does not arise.*

4(2)(m)	*An intermediary not disclosing to his client transactions entered into on his behalf including taking an option position.*	*We have issued all the documents and information as mandated by SEBI and Exchanges including:* *1. Contract notes that record all transactions* *2. Daily margin statements that give a complete picture of applicable margin and the mode of collection thereof.* *3. Statement of Account for funds reflection all the entries in the ledger.* *4. Statement of account for securities reflection movement of securities of clients.* *All these documents have been duly acknowledged by KTM Investors from time to time.* *The allegations of KTM investors on similar lines have been tested by 6 independent, Highly Learned and Experienced IGRP members and members of Arbitral Tribunal have unanimously dismissed the allegations of KTM investors while rejecting their claims and decided the matter in our favour. As a result the allegation of violating 4(2)(m) does not apply.*
4(2)(o)	*Encouraging the clients by an intermediary to deal in securities solely with the object of enhancing his brokerage or commission*	*The allegation is baseless and the SCN does not identify the specific transactions executed for encouraging KTM investors to deal in securities with sole objective of enhancing our brokerage.* *A similar allegation was cast by KTM investor during IGRP and Arbitration and the allegation KTM investors has been tested by 6 independent Highly learned and Experienced IGRP member and members of Arbitral Tribunal who have unanimously dismissed the allegations of KTM investors while rejecting their claims and decide the matter in our favour.* *We deny having encouraged KTM investors to deal in securities with an intention to enhance our brokerage. All the transactions and correct position of affairs was reported to KTM investor and they were fully aware that credit due to sale of options and pay-outs therefore were done as per their instructions as is evident from the letter and emails referred to hereinabove* *Accounts of KTM investors were managed by Mr. Kamlesh Mody who is a seasoned Chartered accountant with an experience of more than 3 ears and it would have been otherwise also impossible for anyone to encourage him to deal in securities solely with the object of enhancing is brokerage or commission as he would have himself surely identified such an attempt.* *As a result the question of violation of Clause 4 (2) (o) does not arise.*
4(2)(p)	*An intermediary predating or otherwise falsifying records such as contract notes*	*The SCN fails to identify any contract note or other document which is predated or falsifies the record.* *The P&L statements referred in the SCN were made as per the directions of KTM investors. This method was developed by KTM investors to segregate different types of transactions and profits/ losses therefrom and in various emails and minutes of meetings KTM investors recorded that the calculations are as per their method which was different from standard method. Correct P&L statements based on all transactions were also submitted to KTM investors from time to time evidence for which is already on record. The difference between correct P& L statements and the P& L statements made as per the method of KTM investors was also explained to them and after being satisfied with such explanations, KTM investors would accept the statements with remarks to the effect that the difference has been explained to them by affixing their signature below such remarks.* *The allegation of SEBI has also been tested by 6 independent, Highly Learned and Experienced IGRP members and members of Arbitral Tribunal who have unanimously appreciated the fact that the difference in the P&L statements was due to a different method suggested by KTM investors.*

		Therefore, the allegation of violating Clause 4(2) (p) does not hold good.
A(3)	*Manipulation: A stock broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view of distorting market equilibrium or making personal gains*	*The SCN has nowhere identifies transactions which distorted the market equilibrium or for making personal gains.* *All the transactions were executed as per the directions of KTM investors and no fault has been found in them by 6 independent, Highly Learned and Experienced IGRP members and members of Arbitral Tribunal who have unanimously rejected similar allegations cast upon us by KTM investors during the IGRP and Arbitration proceedings.* *We therefore submit that we have not violated Clause A(3) of Code of Conduct.*
A(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.*	*The submissions made above would clearly go to prove that we have been in compliance of all the provisions of Act, Rules, Regulations issued by Government, SEBI and Stock Exchanges as applicable to stock brokers.* *A similar conclusion has been drawn by 6 independent, Highly Learned and Experienced IGRP members / members of Arbitral Tribunal failing which they would not have unanimously decided the matter in our favour.* *We therefore, submit that we have not violated Clause A(5) of the Code of Conduct.*
B (4) (b)	*A stock broker shall not furnish false or misleading quotations or give any other false or misleading advice or information to the clients with a view of inducing him to do business in particular securities and enabling himself to earn brokerage on commission thereby*	*The SCN does not allege that we have given false or misleading quotations to KTM investors.* *We have also not given any false or misleading recommendation or information to KTM investor with a view of inducing them to do business particular securities for the purpose of earning brokerage or commission and the same has been tested by 6 independent, Highly Learned and Experienced IGRP members / members of Arbitral Tribunal.* *We therefore, submit that we have not violated Clause B(4) (b) of the Code of Conduct.*
B (4) (a)	*A stock broker shall not encourage sales or purchases of securities with the sole object of generating brokerage or commission*	*We would like to submit that no transactions have been carried out by encouraging sale/ purchased of securities with the sold object of generating brokerage or commission. The SCN also does not identity any such transactions.* *Similar allegations were cast by KTM investors in the IGRP and Arbitration proceedings which had been rejected by the IGRP as well as Arbitral Tribunal constituted by the Exchange comprising of 6 Independent, Highly Learned and Experienced members and as such the contention that sales or purchases were encouraged with the sole object of generating brokerage or commission does not arise.* *We therefore, submit that we are not in violation of Clause B(4) (a) of the Code of Conduct.*

58. *As such the observations of the OD stating that profit payouts were given when accounts were actually in losses, that various incorrect statements I reports which were at variance with actual profit and loss statements, that fictitious profits have been declared and that we prima facie distorted the actual position by concealing facts, to ensure continuous trading by customer is no established and are devoid of merits. The conclusion is blatantly incorrect as SEBI brushed aside voluminous records submitted in this regard without any rhyme or reason.*

D. Losses are covered by premium on sale of options and shown only at the latter stage

59. *It is denied that options were sold on behalf of clients for taking further positions or making pay outs {stated to be profit pay-outs) whenever there were debit balances in clients ledger due to losses of previous expiry period, which resulted in postponing disclosure / hiding of actual losses and thereby accumulation of heavy losses to investors over a period.*

60. *The aforesaid explanations to clause C clearly substantiate that clients were fully aware of different reasons for pay-out and have recorded in various conversations about the pay-outs being segregated between profit and option premium. Therefore, there is no question of deliberate! selling options to delay the disclosure of losses.*

61. *KTM investors have also gone ahead to record that correct position of profit / loss is to be calculated after the expiry of open position which also goes on to substantiate that they were fully aware of the credits due to sale of options and effect thereon on the ledger balance. Therefore, the allegation that options were sold for taking further positions or making pay-outs (stated to be profit pay-outs) whenever there were debit balances in ledgers of KTM investors due to losses of previous expiry period is incorrect and misplaced.*

62. *Further since the KTM investors were fully aware of the effect of the sale of options and credit premium in the ledger there was no question of postponing disclosure / hiding of actual losses and thereby accumulation of heavy losses to investors over a period. KTM investors have confirmed the transactions effected in their accounts through mails on a daily basis which will go to prove that they are aware of not only sale of options, but also the effect of sale of options. Copies of the mail / acknowledgements are filed herewith as Annexure 18.*

63. *It is submitted that the pay-outs in question were in fact pay-outs on account of option premium credit, profits when earned, dividends earned on shares offered c.s. margin, share sale credit, margin deposits etc. and KTM investors, at all points of time, were aware of the same. It is submitted that it was KTM investors who requested for such pay-outs from time to time. There are various correspondences which go to prove that KTM investors were fully aware of the fact that the optic sale credit is being paid out and the same has no relation to the "profits". Copy of the mail communication / letters in this regard is filed in response to allegations in clause "C" of the SCN.*

64. *Other explanations in response to clause "C" of the SCN are also relevant and we crave leave to rei on the same. The submissions are not repeated in the interest of brevity.*

65. *With regards to the allegations in clause "D" it is submitted as under:*

Reg./ Sec. No.	*Regulation*	*Explanation*

3	*No person shall directly or indirectly -*	
3 (a)	*Buy, sell or otherwise deal in securities in a fraudulent manner;*	*None of our act can be categorized as fraud under Reg. 2(1)(c).* *AII transactions affected by KTM investors have been confirmed by them on a daily basis including sale of option contracts.* *KTM investors have also taken payouts of premium awards sale of options and are well aware that these were options premium pay-outs.* *Profit and loss statements reflecting losses been acknowledged by KTM investors from time to time which go to prove that they were aware of losses in their accounts.* *As a result we cannot be said to have violated regulation 3(a).*
4(1)	*Without prejudice to the provisions o None of our acts can be said to have fraudulent o regulation 3, no person shall indulge in unfair trade practice in securities* *.*	*None of our acts can be said to have fraudulent or unfair.* *In fact, 6 independent, Highly Learned and Experienced IGRP members and members of Arbitral Tribunal have unanimously dismissed the allegations of KTM investors which were on similar lines as that in the current SCN.* *As such we are not in violation of Clause 4(1) of PFUTP Regulations.*
A(1)	*Integrity: a stock broker shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business*	*We have conducted our business with high standards of integrity, promptitude and fairness. The SCN does not bring out any case where we have failed on these counts.* *As such we are not in violation of Clause A(1) of the Code of Conduct*
A(2)	*Exercise of Due Skill & Care: A stock broker shall act with due skill, care and diligence in the conduct of all his business*	*None of the allegations contained in the SCN attract this clause.* *The IGRP as well as the Arbitral Tribunal constituted by the Exchange comprising of 6 independent, Highly Learned and Experienced IGRP members have also concluded that the losses were clearly made known to KTM investors which will again go to prove that we have exercised due skill and care in providing broking services to our clients.* *As such it cannot be alleged that we have violated Clause A(2) of the code of conduct*
A(5)	*Compliance with statutory requirements: A stock broker shall abide by all the provisions of the e 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*	*The submissions made above would clearly go to prove that we have been in compliance of all the provisions of Act, Rules, Regulations issued by Government, SEBI and Stock Exchanges as applicable to Stock Brokers.* *A similar conclusion has been drawn by 6 independent, Highly Learned and Experienced IGRP members / members of Arbitral Tribunal.* *We therefor submit that we have not violated Clause A(5) of the Code of Conduct.*

66. *As such we hereby submit that we have never violated the regulations 3(a) and 4(1) of PFUTP Regulations, and Clauses A(l), A(2) and A(5) of Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992. We would like to further submit that Clause 4(1) of PFUTP Regulations is only an*

introduction to Clause 4 (2) where it simply says that no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

67. *However, the activities that would comprise manipulative, fraudulent or an unfair trade practice in securities markets are enshrined in Clause 4 (2), without enumerating any of the sub clauses 'a' to 't' of Clause 4 (2), Clause 4 (1) of PFUTP Regulations cannot be sustained unilaterally.*

E. Delayed pay in and Late pay in charges levied by the Member

68. *Delayed / late payment charges were of similar nature levied on amounts deployed by us on behalf our clients and the consent for the same was received through Voluntary Clauses Agreement. We would like to further submit that delayed / late payment charges were charged in accordance with the rate agreed upon. The SCN does not quantify the excess amount of interest that has been levied*

69. *In fact, whenever there is a shortfall in either margin or in case of debit, an intimation is sent through SMS informing the client to clear the same. Failure to clear the debit will result in charging or delayed/ late payment charges. Further all these charges are reflected in the statement of account and KTM investors have acknowledged and confirmed the transactions and delayed/ late payment charges debited in the statement of accounts from time to time which would also go to prove that they are aware of the charges and the reason as to why those charges are levied. The statement o accounts duly acknowledged by KTM investors are filed herewith as Annexure 29 to the reply to the Inspection Report- Annexure A.*

70. *The IGRP as well as the Arbitral Tribunal constituted by the Exchange comprising of 6 Independent, Highly Learned and Experienced members had succinctly concluded that the transactions were effected basis the directions of KTM investors and as such the allegation that consent was taken from KTM investors post execution of trades were incorrect.*

71. *As a consequence, the other allegations with respect to pay-outs/ decision on taking further positions without receipt of pay in and decision to charge delayed / late payment charges are incorrect. Further as stated above KTM investors were appraised about margin shortfalls as well a debit balances through SMS and were requested to clear the same. SMS log evidencing such requests are attached herewith as **Annexure 19**.*

Reg./ Sec. No.	*Regulation*	*Explanation*
B 4 (a)	*A stock-broker shall not encourage sales or purchases of securities with the sole object of generating brokerage or commission*	*We would like to submit that the delayed payment charges were levied as per the clauses of the agreement executed by KTM investors and the same has been affirmed by the IGRP as well as the Arbitral Tribunal constituted by the Exchange comprising of 6 Independent, Highly learned and Experienced members.*

		Moreover, major portion of the delayed payment charges got levied on final debits that got fructified in the accounts of KTM investors post their last transaction and as such cannot be said to be in violation of Clause B 4 (a) which deals with generation of brokerage or commission. As such the contention that sales or purchases were encouraged with the sole object of generating brokerage or commission does not arise. *Moreover, when the transactions effected by KTM investors themselves were not disputed by KTM investors, the question of delayed payment charges on debit balances arising out of such transactions cannot be construed in violation of Clause B 4 (a).* *We therefore submit that we are not in violation of Clause B (4) (a) of Code of Conduct.*
B (4) (b)	*A stock broker shall not furnish false or misleading quotations or give any other false or misleading advice or information to the clients with a view of inducing him to do business in particular securities and enabling himself to earn brokerage or commission thereby*	*All the charges levied to the accounts of KTM investors have been intimated to them on a periodical basis and they have also confirmed the same by signing the statement of accounts.* *We therefore submit that we have not violated Clause B (4) {b) of Code of Conduct*

72. *In light of all the above submissions, we would like to submit that we are not in violation of Claus (B) (4) (a) and (b) of the Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Broker and Sub Brokers) Regulations,1992 and Regulation 4 (2) (I) and (o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.*

F. Non Settlement of inactive clients for an amount of Rs. 63,94,5432.85

73. *We hereby submit that the amount of non-settlement of inactive clients has been mistakenly amounted as Rs.63,94,5432.85 instead of the actual amount of Rs.63,94,5432.85.*

a. Non Settlement of Fund balancing amounting to Rs.26,66,395.28

74. *The SCN acknowledges that we have settled the accounts of almost all clients on a monthly quarterly basis.*

75. *We have around 3.5 lakhs clients and around 77460 active clients during the period covered under the inspection. We have a daily turnover of about Rs.3030.42 crores and the annual turnover of Rs.751543.07 crores. The average credit balance of clients on a daily basis is Rs.33.16 crores resulting into a cumulative annual credit balance of 8187.96 crores. As recorded in the inspection report, we have diligently settled the accounts of all the active clients and the letter of SEBI specifically record the same.*

76. *You will appreciate that as business continues year after year a small portion of client balance keep on getting accumulated which remains unsettled in-spite of using all possible means of settling them. This is true for all businesses including banking, braking, insurance, mutual funds etc. As per the publically available reports, the amount of unclaimed deposits with banks is in excess of Rs. 8000 Crores. A copy of one such newspaper report is annexed as Annexure 20.*

77. *We have been in business for last 24 years and over a period of time certain balances have accumulated and we have always tried to settle the same. As a result, the balance of clients observed in the SCN was about Rs.26 lakhs of which certain accounts are admittedly settled and others are held back for some valid reasons given hereunder:*

S. No	***Client Code***	***Amount***	***Effort Taken for Settlement***	***Current Status***	***Proof of Settlement***
1	*3851026022*	*281959.27*	*New bank accounts mapped post continuous follow - up with client and payout settled*	*Settled*	*Statement of Accounts*
2	*R511060113*	*251844.00*	*Details of the securities through which dividend was received along with proof was submitted to the Banker of NRI client basis which the pay out was accepted*	*Settled*	*Statement of Accounts*
3	*238954380*	*246910.48*	*New bank account mapped post continuous follow- up with client and pay out settled*	*Settled*	*Statement of Accounts*
4	*J891028969*	*207555.33*	*Funds released as part of SEBI Pay- out*	*Settled*	*Statement of Accounts*
5	*I811022580*	*152689.15*	*Through sustained efforts, legal heirs of the deceased client were contat1ed,death certificate, legal heirship certificate, NOC were obtained and pay-out was effected to the bank account of legal heir*	*Settled*	*Statement of Accounts*
6	*P971003787*	*106472.20*	*NEFT pay out rejected. Customer could not be contacted even aft r repeated reminders*	*Not Settled*	*Statement of Accounts*
7	*4311032509*	*100000.00*	*Payment made by the client on 21/12/2018 (same quarter payin) and settlement made on 12/03/2019*	*Settled*	*Statement of Accounts*
8	*128166016*	*86826.55*	*New bank account mapped post continuous follow up with client and payout settled*	*Settled*	*Statement of Accounts*
9	*G92273006*	*68971.26*	*Payment made by the client or. 14/08/2018 and settlement made on 24/09/2018*	*Settled*	*Statement of Accounts*
10	*Z99764684*	*56622.80*	*Correct bank account details mapped post continuous follow- up with client and payout settled*	*Settled*	*Statement of Accounts*
11	*I661017152*	*51896.80*	*Client was contacted through continuous follow up and client utilised the amount post activation of account*	*Settled*	*Statement of Accounts*
12	*7321068034*	*50000.00*	*Payment made by the client on 06/08/2018 and settlement made on 04/10/2018*	*Settled*	*Statement of Accounts*
13	*M89754638*	*47984.00*	*NEFT payout rejected. Cheque payout made and settled*	*Settled*	*Statement of Accounts*
14	*G92273217*	*45275.83*	*New bank account mapped post continuous follow - up with client and payout settled*	*Settled*	*Statement of Accounts*

15	M51375120	41402.00	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Settled	Statement of Accounts
16	GI1410040	40844.19	Client is an active trader and periodic settlements of funds were effected	Settled	Statement of Accounts
17	H771037830	39530.38	Client was contacted through continuous follow up and client utilised the amount for transactions	Settled	Statement of Accounts
18	174933652	37193.52	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not Settled	Statement of Accounts
19	219953675	36065.12	NEFT payout rejected. Cheque payout made and settled	Settled	Statement of Accounts
20	P8826101	35206.00	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not Settled	Statement of Accounts
21	691904329	35000.00	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settl ed	Statement of Accounts
22	7321043571	34550.84	Client is an active and periodic settlements of funds were effected	Settled	Statement of Accounts
23	G02753432	32861.85	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
24	H901025424	32424.96	New bank accounts mapped post continous follow- up with clients and payout settled	Settled	Statement of Accounts
25	E51912877	32309.17	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
26	C743001770	31728.72	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
27	39848120	31017.00	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
28	369409495	27897.51	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
29	G0216184	24901.52	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
30	R231033724	24741.05	New bank account mapped post continuous follow- up with client and payout settled	Settled	Statement of Accounts
31	191710673	24700.00	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
32	2191066032	24250.00	NEFT payout rejected. Cheque payout made and settled	Settled	Statement of Accounts
33	081706170	2352197	New bank accounts mapped post continuous follow - up with clients and payout settled	Settled	Statement of Accounts
34	A11732131	22047.95	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not Settled	Statement of Accounts

35	942133074	20957.00	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
35	N531040926	19808.16	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
37	G08736956	17408.23	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
38	G0863005	16998.00	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
39	9431020986	16188.97	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
40	286934467	15885.69	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
41	G3246456	15284.00	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
42	E111044250	13031.71	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
43	G3246186	12913.02	NEFT payout rejected. Cheque payout also got rejected. Custorner could not be contacted even after repeated reminders	Not settled	Statement of Accounts
44	G1018128	11216.00	NEFT payout rejected. Cheque payout made and settled	Settled	Statement of Accounts
45	G12339340	10961.10	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
46	N75902477	109:.3.46	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
47	115149001	10825.00	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
48	369590045	10803.88	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
49	L33355234	10774.30	NEFT payout rejected. Cheque payout also got rejected. Custoner could not be contacted even after repeated reminders	Not settled	Statement of Accounts
50	G1314027	10143.87	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
51	G1326141	10074.21	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not Settled	Statement of Accounts
52	P8826210	10030.00	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Not settled	Statement of Accounts
53	P8826110	10000.39	NEFT payout rejected. Cheque payout also got rejected. Customer could not be contacted even after repeated reminders	Settled	Statement of Accounts
54	C68922244	0.00	Nil Balance	Settled	Statement of

					Accounts
56	*G011326*	*0.00*	*Nil Balance*	*Settled*	*Statement of Accounts*
56	*R09931154*	*24956.87*	*Payout released once positions are closed*	*Settled*	*Funds retention letters sent to client at the time of SEBI payout.*

78. *From the above table it is evident beyond doubt that we have taken all possible effort to settle the accounts of inactive clients and have reduced the unsettled amount by close to 72%.*

Summary

79. *Out of the 56 inactive clients having a fund balance of Rs.26,66,395.28, SEBI has recorded that we have settled clients having fund balance of 7 clients amounting to 2,94,366.29 during the respective period.*

80. *Out of the remaining balance of Rs. 2372028 .99, we were continuing our efforts to effect settlement and as such we were able to settle the funds of 18 clients amounting to Rs.16,46,270.56. Enclose is the copy of statement of accounts of the settled client as Annexure 21.*

81. *As regards the remaining 31clients with unsettled balance of Rs.7,25,758.43, we are still continuing our efforts to effect settlement, however some of the clients have shifted their residence without any communication I update to us and the cheques sent to them are getting returned. We are further trying to ascertain their current whereabouts. Though the costs of implementation of these measures are more than the amount involved, we are still persisting with the same to enable us to comply with SEBI guidelines. Having made all out efforts to settle clients by all means and having communicated the difficulties, we would like to be guided on any further measures which can be taken by us to settle these few clients. Statement of Accounts reflecting the settlement of fund attempted through NEFT transfers I Cheques (duly highlighted) are filed herewith for your kind reference as Annexure 22*

82. *In line with the directions of the exchange we have taken FD for the unsettled amounts and thereby segregating the same. Further we are in the process of transferring the unsettle amounts (currently lying in the FD) to a separate bank account as directed by SEBI vide circular dated February 10,2020.*

b. Non Settlement of Securities balance amounting toRs.37,28,147.57

83. *The SCN acknowledges that we have settled the accounts of almost all clients on a monthly quarterly basis.*

84. *We would like to submit that we have been effecting the settlement of securities to all clients as per the guidelines of SEBI. However, settlement of securities to some*

clients failed due to invalid DP id demat account closed, ISIN suspended, rejected at the depository level, etc. which were not within our control. Further for some cases, the securities were retained due to the debit balance in the respective client's trading account at the requisite points of time.

85. *We have been repeatedly trying to connect with these clients through our branch personnel seeking them to update their latest demat account details to enable us to reinitiate the transfer of securities. We have been also sending email communication/ postal communication to all the inactive clients whose demat account details seems to be invalid to update their demat account numbers. Copies of communication sent to clients and settlement of accounts are attached herewith as Annexure 23.*
86. *According to the SCN securities were settled to almost all clients and few could not be settled for some valid reasons, given hereunder:*

Client Code	*Value of Securities*	*Reason for non-settlement of Securities*	*Effort Taken for Settlement*	*Settled Value*	*Not Settled Value*	*Current Status*	*Proof of Settlement*
946980	*860991.85*	*Shares withheld due to debit*	*Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*860991.9*	*-*	*Settled*	*Statement of Accounts*
720007	*315355.25*	*Transfer rejected*	*Communication sent to client for updation of Demat Account+ Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account + Few securities were not traded, hence could not be sold*	*301720.2*	*13635.1*	*Not traded*	*Copy of communication sent + Statement of Accounts*
132004	*219579.5*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*219579.5*	*-*	*Settled*	*Copy of communication sent + Statement of Accounts*
719883	*140758.75*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*140758.8*	*-*	*Settled*	*Copy of communication sent + Statement of Accounts*
721078	*117682.05*	*Closed DP*	*Communication sent to client for updation of Demat Account+ Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account + Few securities were not traded, hence could not be sold*	*117188.6*	*493.5*	*Not Traded*	*Copy of communication sent + Statement of Accounts*

714745	*112546.25*	*Transfer Rejected*	*Communication sent to client for updation of Demat Account+ Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account + Few securities were not traded, hence could not be sold*	*112546.3*	*-*	*Settled*	*Copy of communication sent + Statement of Accounts*
535024	*101702*	*Transfer Rejected*	*Communication sent to client for updation of Demat Account+ Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account + Few securities were not traded, hence could not be sold*	*101357*	*345*	*Not Traded*	*Copy of communication sent + Statement of Accounts*
719255	*97341*	*Invalid / Closed DP*	*Communication sent to client for updation of Demat Account+ Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account + Few securities were not traded, hence could not be sold*	*96670*	*671*	*Not Traded*	*Copy of communication sent + Statement of Accounts*
22149	*95392.5*	*Invalid / Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*95392.5*	*-*	*Settled*	*Copy of communication sent + Statement of Accounts*
719131	*75139*	*Invalid / Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*75239*	*-*	*Settled*	*Copy of communication sent + Statement of Accounts*
495027	*68290.15*	*Transfer Rejected*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*68290.15*	*-*	*Settled*	*Copy of communication sent + Statement of Accounts*
745425	*63924.5*	*Invalid / Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*63924.5*	*-*	*Settled*	*Copy of communication sent + Statement of Accounts*
719921	*63165*	*Invalid / Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*63165*	*-*	*Settled*	*Copy of communication sent + Statement of Accounts*
145158	*50400.35*	*Transfer Rejected*	*Communication sent to client for updation of Demat Account*	*50400.35*	*-*	*Settled*	*Copy of communication*

			+ Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account				sent + Statement of Accounts
75276	49218.75	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account	49218.75	-	Settled	Copy of communication sent + Statement of Accounts
733667	42893.55	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account	42893.55	-	Settled	Copy of communication sent + Statement of Accounts
86005	39335.7	Transfer Rejected	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account	39335.7	-	Settled	Copy of communication sent + Statement of Accounts
303082	38452.7	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account	38452.7	-	Settled	Copy of communication sent + Statement of Accounts
734843	37633	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account	37633	-	Settled	Copy of communication sent + Statement of Accounts
714645	37500	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account	37500	-	Settled	Copy of communication sent + Statement of Accounts
235081	34780.5	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account + Few securities were not traded, hence unable to sell	34631.75	148.78	Not Traded	Copy of communication sent + Statement of Accounts
786503	29938.5	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account + Few securities were not traded, hence unable to sell	29938.5	371	Suspended	Copy of communication sent + Statement of Accounts
341003	27664.1	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the	27664	0.1	Not Traded	Copy of communication

			directives of SEBI and the sale proceeds were credited to the respective client account + Few securities were not traded, hence could not be sold				sent + Statement of Accounts
2.03238	23005	Shares withhold due to debit	Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account	23005	-	Settled	Statement of Accounts
742791	20280	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account + Few securities were not traded, hence could not be sold	19860	420	Not Traded	Copy of communication sent + Statement of Accounts
765636	19197.5	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account + Few securities were not traded, hence could not be sold	18547.5	650	Not Traded	Copy of communication sent + Statement of Accounts
723943	17140	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account	17140	-	Settled	Copy of communication sent + Statement of Accounts
703070 I	16885.8	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account	16885.8	-	Settled	Copy of communication sent + Statement of Accounts
2234	14829.15	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account	14829.15	-	Settled	Copy of communication sent + Statement of Accounts
707453	13987.6	Shares withhold due to debit	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account	13987.6	-	Settled	Copy of communication sent + Statement of Accounts
461015	11658.35	Invalid/ Closed DP	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account	11658.35	-	Settled	Copy of communication sent + Statement of Accounts
719360	11627	Transfer Rejected	Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale	11627	-	Settled	Copy of communication sent + Statement of Accounts

			proceeds were credited to the respective client account				
717382	*10487.5*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*10487.5*	*-*	*Settled*	*Copy of communication sent + Statement of Accounts*
724718	*8136*	*Transfer Rejected*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*8136*	*-*	*Settled*	*Copy of communication sent + Statement of Accounts*
722846	*5774.5*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*5774.5*	*-*	*Settled*	*Copy of communication sent + Statement of Accounts*
1034	*12224*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*-*	*12224*	*Invalid OP/ No. PAN*	*Copy of communication sent*
16469	*14455.35*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*-*	*14455.35*	*Invalid OP/ No. PAN*	*Copy of communication sent*
18162	*27145.63*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*-*	*27145.63*	*Invalid DP/ No. PAN*	*Copy of communication sent*
19014	*28400*	*ISIN Suspended*		*-0*	*28400*	*Suspended*	
21856	*14157*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*-*	*14157*	*Invalid DP/ No. PAN*	*Copy of communication sent*
28357	*10858.2*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Client shares sold as per the directives of SEBI and the sale proceeds were credited to the respective client account*	*-*	*10858.2*	*Invalid DP/ No. PAN*	*Copy of communication sent*
34332	*50850*	*Shares withhold due to debit*	*Communication sent to client for updation of Demat Account + Invalid PAN hence shares could not be sold*	*-*	*50850*	*Invalid DP/ No. PAN*	*Copy of communication sent*

37022	*69000*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Invalid PAN hence shares could not be sold*	*-*	*69000*	*Invalid DP/ No. PAN*	*Copy of communication sent*
58000	*6112*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Invalid PAN hence shares could not be sold*	*-*	*6112*	*Invalid DP/ No. PAN*	*Copy of communication sent*
62047	*32125*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Invalid PAN hence shares could not be sold*	*-*	*32125*	*Invalid DP/ No. PAN*	*Copy of communication sent*
94049	*40680*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Invalid PAN hence shares could not be sold*	*-*	*40680*	*Invalid DP/ No. PAN*	*Copy of communication sent*
100083	*88487.5*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + ISIN suspended and unavailable for trading*	*-*	*88487.5*	*ISIN suspended*	*Copy of communication sent*
105010	*22050*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Invalid PAN hence shares could not be sold*	*-*	*22050*	*Invalid DP/ No. PAN*	*Copy of communication sent*
108014	*32100*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Invalid PAN hence shares could not be sold*	*-*	*32100*	*Invalid DP/ No. PAN*	*Copy of communication sent*
166019	*17040*	*ISIN suspended*	*ISIN suspended*	*-*	*17040*	*ISIN suspended*	
506024	*69967*	*Inter Depository Transfer*	*Depository Transfer*	*-*	*69967*	*Invalid DP/ No. PAN*	*Copy of communication sent*
620316	*66700*	*Invalid/ Closed DP*	*Communication sent to client for updation of Demat Account + Invalid PAN hence shares could not be sold*	*-*	*66700*	*Invalid DP/ No. PAN*	*Copy of communication sent*
738150	*17618.8*	*Transfer Rejected*	*Communication sent to client for updation of Demat Account + Scrip not traded hence unable to sell*	*-*	*17618.8*	*Not Traded*	*Copy of communication sent*
1018760	*190650.24*	*Transfer Rejected*	*Communication sent to client for updation of Demat Account + Scrip not traded hence unable to sell*	*-*	*190650.24*	*Not Traded*	*Copy of communication sent*

87. *From the above table it is evident beyond doubt that we have taken all possible effort to settle the securities of inactive clients and have reduced the unsettled amount by close to 79%.*

Summary

88. *We would like to submit that the OD has observed 56 inactive client account, wherein the securities amounting to Rs.37,28,147.57were unsettled. With respect to same*

we have submitted that reason for non –settlement of client securities as detailed above.

89. *Basis FAQ of Exchanges vide Circular dated 04.09.2019 client securities which were held with us were disposed after giving notice of 5 days and the sale proceeds were paid to respective clients as payout. Securities amounting to Rs.28,90,096.40 were settled and the sale proceeds were paid to the respective client.*

90. *We were unable to settle securities amounting to Rs.8,38,051due to following reasons*

Reason	***Value of Securities***
Securities not traded/ Suspended	*3,58,931.12*
Invalid Pan	*4,09,153.05*
Securities that could not be transferred due non availability of ISIN in the Depository in which client has got demat account	
Grand Total	***8,38,051.17***

91. *However we have transferred the securities of all unsettled clients to an escrow account bearing no. IN301696 -11562833 in compliance of SEBI guidelines**. Having made all out efforts to settle clients by all means and having communicated the difficulties, we would like to be guided on any further measures which can be taken by us to settle these few clients**. As such we would like to submit that we are not in violation of clause 12e of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 (annexure) of SEBI/t10/MIRSD2/CIR//P/2016/95 dated September 26, 2016.*

G. Delay in uploading client details in CentralKnow Your Client (CKYC:) system

92. *We would like to submit that out of total list of 8 cases, details of 5 clients were already available with CKYC as such there was no need for us tc upload the data to CKYC as ·KYC details did not undergo any change and the copies of screenshot reflecting the details of KYC updated at CKYC prior to the date of account opening was enclosed as Annexure 16 (Colly) to our reply Inspection Report- Annexure B.*

Sl. No.	*Client Code*	*PAN No*	*CKYC No*	*CKYC Date*	*Date of UCC Registration*	*Remarks*
1	*Al40010*	*DKVPS3566P*	*40074716546009*	*01-Dec-17*	*07-Feb-19*	*KYC details already available*
2	*AL40023*	*BDBPS4278K*	*50090634237524*	*18-Jan-19*	*14-Feb-19*	*KYC details already available with CKYC*
3	*Al40036*	*BMJPB3797F*	*50092723577433*	*08-Nov-17*	*18-Feb-19*	*KYC details already available with CKYC*

4	*AL40092*	*BOAPD5692C*	*50060478956200*	*16-Nov-17*	*26-Feb-19*	*KYC details already available with CKYC*
5	*AL40102*	*AONPN1712R*	*50035297458030*	*12-Nov-18*	*27-Feb-19*	*KYC details already available with CKYC*

93. *With respect to client code 1067714, we would like to submit the fact that we have uploaded the KYC details of the client with CKYC on 19/05/2017 bearing CKYC reference no. 10002209448 i.e. two days from the date of opening of account. However the upload was not successful and the same was rejected with the remarks "KYC ID NOT CONFIRMED" i.e. Mismatch of name with KYC and Par website. Hence we had requested NSDL to provide the name of the clients as per PAN website and upon receipt of the same, the KYC details were immediately updated with CKYC. We also requested CKYC and other infrastructure institutions to modify the process of client name validation with PAN and the same was implemented in due course. The instance recorded in letter of SEBI is prior to rectification of process by CKYC and therefore there is no non-compliance at our end.*

94. *As regard client code 1020682, we would like to submit that account has been opened in 2013 i.e. prior to the date of implementation of CKYC. Hence the details required for uploading the KYC details with CKYC was incomplete and we have been continuously following up with the client for getting the required data. Upon receipt of the same, KYC details of the client was immediate! updated with CKYC.*

95. *With respect to client code AL40130, we would like to submit that the client is a KRA verified client basis which the trading account of the client was opened. Since there was a delay in obtaining the KYC documents of the client from KRA, the upload of KYC details with CKYC was delayed.*

96. *As such we would like to submit that there was no delay in upload of KYC details of clients to CKYC portal and we are not in violation of SEBI circular ref no. CIR/MIRSD/66/2016 dated July 21, 201 refer to exchange notice no. 20161130-10 dated 30 November 2016, 20161111-24 dated November 2016 & 20160722-8 dated 22 July 2016.*

H. No dedicated E-Mail id for redressal of grievances

97. *We would like to humbly submit that as per SEBI circular MRD/DoP/Dep/SE/Cir-22//06 dated December 18, 2006, we as a SEBI registered stock broker have a dedicated email id care.stocksandsecurities@adityabirlacapital.com alleged for the purpose of receiving complaints o broking clients.*

98. *Likewise we have dpcare.stocksandsecurities@adityabirlacapital.com for receiving and redressing complaints received from depository participant clients. The said email ids are exclusively dedicated only to address the grievance/queries of the clients and not for any other purpose.*

99. *We would like to further submit that under the capacity of listed company, abml.investorgrievance@adityabirlacapital.com is the dedicated email id for the purpose of registering complaints by investors.*

100. *We would like to further submit that we have a dedicated e-mail id for compliance officer abm-chn.compliance@aditvabirlacapital.com.*

101. *The said email ids are published in the notice boards I contract notes I demat holding I transaction statements and other communications sent to customers.*

102. *We therefore beg to differ on the observation and submit that we have dedicated email IDs for handling client grievances and the same are uploaded to Exchanges and Depositories. Screenshots of website I KYC I contract notes etc. reflecting the above email IDs are annexed as Annexure 24. As such we would like to submit that we are not in violation of clause 4 of SEBI circular MIRD/Dop/Dep/SE/Cir-22/06 dated December 18, 2006.*

I. SMS alert facility not enabled in the Depository Participant Module (DPM) and Power of Attorney(POA) activated without obtaining mobile number from the client

103. *We would like to submit that SMS alert facility flag was flagged in our LD DP Back office system for all the SO clients however while transferring the data from the LD DP Back office to DPM, due to some technical glitches, the same was missed out for 8 clients. However, the issue had been fixed and we ensure non-repetition of the same.*

104. *We would like to submit that the said demat account 10222852 is an additional demat account mapped to the trading account of Mr. Surendar Shenoy. The primary demat account of the said client is 1203760000736497 and the mobile number of the client 9448010689 is mapped to the said demat account and SMS flag is also enabled for the same. Copy of the Audit Trail Report is enclosed herewith as Annexure 25 to prove that the SMS Flag was enabled on the same date on which POA was mapped to the primary demat account. The POA for the additional demat account was enabled based on the request received from the client. As a process any modification request will be initially updated to the back office CCM, which is a common platform wherein all the details of a client will be available. As such while enabling the POA for the said client, the availability of mobile number was verified and the same was updated. The said modifications request was manually updated in the NSDL DPM, since the availability of mobile number was already verified in the LD CCM, the PO was enabled. However, it is to be noted that the DPM didn't show any error message while enabling POA for the said demat id which was not updated with Mobile number. However we would like to submit that we have strengthened our process thereby ensuring non-repetition of the said observation.*

105. *In view of the above we would like to submit that we are in compliance of Point 1.12 of SEB Master Circular for Depositories dated December 15,2016.*

J. In 160 instances, Securities with value of Rs.5,41,502.76 were transferred from client demat to promoter account.

106. *We would like to submit that out of total value of Rs. 541,502.76, shares worth Rs. 2,38,086/ (involving 77 instances) were purchased on various occasions through our trading accounts for testing purpose and were lying to the credit of the company. As such, own securities worth Rs. 2.3 lakhs were transferred to the demat account of the trading member -10001373. Contract Note evidencing the said purchases were filed along with our reply dated July 2, 2019.*

107. *Withdrawal of such securities is permitted under NSE CM Regulation 6.1.5 (f) which is quote hereunder:*

"

(i)...
(ii)...
(iii) Securities to be withdrawn from Constituents beneficiary account: No security shall be drawn from Constituents beneficiary account other than
A. when they are properly required, for delivery to or on behalf of constituents, for o towards meeting the Constituents' margin or pay-In obligations;
B. what are drawn under Constituents' authority in respect of which there is a liability o
Constituents to the Trading Member;
C. securities which by mistake or accident have been deposited into the account;"

108. *We have received and delivered 7.98 crore liquid Bees over past 16 years of operation of our demat account, value of which is about 7978.68 crores on behalf of thousands of clients. It is an admitted fact that the dividend on these liquid bees comes in 3 decimals and splitting them to the clients who own a small part of it is practically impossible. This leaves us with a miniscule fraction of dividend which is impossible of getting distributed to clients as the units in 3rd decimal cannot be transferred. So over a period of 16 years' liquid bees worth Rs. 2,53,859/-, got accumulated in our account. This is a negligibly small 0.00032% of the value of shares received into and delivered from our account. Further interest keeps accruing on these fractions of units and effectively results in increase in number of units over a period of 16 years. A copy of transaction statement of liquid bee over these years was filed along with our reply dated July 2, 2019. The same is filed herewith an Annexure 26 for ready reference.*

109. *Due to impossibility of transferring fractions in 3'd decimal, we have moved them to our ow account and are open to deal with it under the guidance of SEBI including depositing it to the investor protection fund if so directed. We look forward for guidance from SEBI in this regard.*

110. *Shares worth Rs. 49,556/-(involving 44 instances), were received against the corporate action o shares placed as collateral by the clients in the Margin account. Since the corporate action credit in received against the total quantity of shares placed by various clients held in the Margin account these fractional shares could not be transferred to any one particular client. Hence we settled the value for the fraction shares in cash by crediting the equal value directly to the respective client trading account. Statement of accounts evidencing credit of fractional value of shares was file along with our reply dated July 2, 2019. The same is once again filed herewith as Annexure 27 for ready reference.*

111. *We would like to further submit that shares involving all 160 instances were continuously held in our Margin and Client Beneficiary Account till August 2018 and based on the observations of NSE during its inspection of our books of accounts we transferred these shares to our own demat account. As such we would like to submit that we are not in violation of clause 12e of SEBI circular SEBIIMIRSDISEICir-1912009 dated December 03, 2009 and Clause 8.1.1 (annexure) of SEBIIHOIMIRSD2IC1RIIPI2016I95 dated September 26, 2016 in light of the aforesaid it is submitted that we have not violated any of the Act I Regulations I Guidelines or Circulars of SEBI as alleged of otherwise. Without prejudice to the above it is submitted that:*

a. There is no disproportionate gain or unfair advantage to us due to the retention of such credit and the Notice also does not allege any such disproportionate gain or unfair advantage.

b. No loss has been caused to the investors and there has not been a single complaint to that effect from any client.

c. The observation of SEBI is a one off instance as SEBI has inspected on several occasions, but we have never been penalized for any of these violations or subjected to any Notice.

JUDGEMENTS OF SEBI AND SAT:

112. *There have been several judgments of Hon'ble Securities Appellate Tribunal, which have established guiding principles for conducting inspection and levy of penalty.*

a. *UPSE Securities Ltd. Vs SEBI dated July 25, 2011*

"In Clause 5 of the said judgement, the Hon'ble SAT has recorded "Before concluding we cannot resist observing that the object of carrying out inspection of books of account and records of any intermediary including a stock exchange or its subsidiary is to ensure" compliance with provisions of the Act, Rules, Regulations, Bye-laws and circulars issue from time to time which are meant to regulate the securities markets. Every little irregularity / deficiency noticed during the course of inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if inspecting team at the time of inspection were to advise the erring entity....."

b. *DSE Securities Ltd. Vs SEBI dated September 9,2012*

In this order too the Hon'ble SAT re-enforced its above stand and also recorded it comments in its order of Religare Securities dated June 6, 2016.

c. *In its orders in the matter of IFCI Financial Services Ltd. dated May 22, 2017 an Marfatia Stock Braking Private limited dated February 16, 2018, SEBI has relied on the judgments of UPSE Securities and DSE Securities and have not inflicted any penalty to the brokers.*

113. *In light of the aforesaid we have once again submit and reiterate that we have not violated circula dated November 18, 1993 or April17, 2008 and our actions are not such that a monitory penal should be inflicted upon us under Section 230 of the SCRA. We therefore request your good self to not levy any penalty upon us and oblige.*

114. *We believe that the above explanation is adequate to address your concerns. You may feel free to write to the undersigned for further clarification and we will be happy to assist you.*

PRAYER:

115. *The above details I documents and submissions basis the same would clearly go to prove that we have conducted our business in accordance with the Acts, Regulations, Guidelines, Rules, Byelaw and Circulars of SEBI I Exchanges etc. as such are not in violation of SEBI Circular I NSE Circulars/ Byelaws I Regulations indicated in the SCN.*

116. *We therefore pray our submissions to the inspection report and to this SCN along with the supporting documents be considered and the SCN be disposed of without any adverse inference against us.*

7. Personal hearing in the matter was held before the erstwhile AO on July 22, 2020, wherein the following authorized representatives (ARs) – Mr. Pradeep Sharma, Mr. Ravi Ramaiya, Mr. Murali Krishnan and Ms. Gayathri Srinivasan appeared on behalf of the Noticee and reiterated the submissions made in the reply sent vide email dated July 09, 2020. The Noticee requested time for additional submissions and accordingly time till August 01, 2020 was granted for the same. Vide letter dated July 25, 2020 received vide email dated August 01, 2020 the Noticee made post hearing submissions and the same is reproduced below –

We request reference to the captioned SCN, response and personal hearing. At the outset we express our sincere gratitude for allowing us a patient hearing and granting us permission to file written submissions of oral arguments. We humbly submit that all the submissions made to the Inspection Report and in response to the current SCN continue to hold good and the current submission is a summary of oral arguments. Please find below our written submissions:

Response to observations in Clause 4A - Un-authorised Trading and Portfolio Management Services to Unregistered PMS Clients:

1. *We submitted that our dealers executed transactions only with the direction of the clients and therefore these trades were not PMS trades. We also submitted that sharing research recommendations is permitted under SEBI regulations and is a regular practice in securities markets.*
2. *Further it was submitted that Clause B of the Code of Conduct of Stock Broker Regulations states that stock broker shall not encourage sales or purchases of securities or provide misleading quotations / advice with the sole object of generating brokerage or commission and does not specifically preclude a Stock Broker from providing research recommendations to its clients.*
3. *We also submitted that the transactions were never executed with a sole intention of earning brokerage and the feet that at times we have also suggested our clients not to transact / square off their positions, which goes on to substantiate that the interest of clients was kept paramount. Reliance was placed on a voice recording which is part of the record of inspection documents where our dealer was observed to suggest to our client not to execute transaction. Had we intended to merely generate brokerage, we would have preferred to motivate clients to do more trades than suggest them not to trade.*
4. *Even further Regulation 4(g) of the Investment Advisor Regulations specifically exempts stock brokers and sub-brokers from registering as Investment Advisors, while giving research recommendations in course of its business as Stock Brokers.*
5. *We also drew attention of your good self to the declarations of our clients where they clearly recorded that they have only availed stock broking services and not PMS services from us. Reference was made to Annexure 12 (at Pgs. 38 - 56) filed along with SCN reply. The same is filed herewith as Exhibit 1 for your ready reference.*

6. *With regards to findings on complaints, it was submitted that 18 of 20 complaints referred in the SCN have been resolved to the satisfaction of customers. In 2 instances the clients preferred to escalate it to IGRP and Arbitration wherein the complaints of these clients were dismissed without any admission of claim or adverse inference. Reference was made to Paras 10 - 24 of SCN reply, Annexures 2-11 filed along with SCN reply and Annexure 19 - 31 filed along with the reply to inspection report - Annexure B (CD).*
7. *Further we submitted that many of these customers continued to trade even after alleged disputing transactions. Reference was made to Paras 27 - 31 of SCN reply.*
8. *It was also submitted that all disputed transactions in 17 complaints out of 20 complaints were effected prior to April 1, 2018 i.e. the date of implementation of SEBI Circular on stock broker keeping evidence of client placing orders.*
9. *Kind attention of the Hon'ble Adjudicating Officer (AO) is drawn to explanation / clarification on non - applicability of Regulations / Circulars, that are reflected in tables at Pgs. 2 - 4 8t 10 -11 of the SCN reply.*

Response to observations in Clause 4 B - Lack of adequate systems and Internal Control:

1. *With regards to use of terminals, it was submitted that the categorization of terminals was based on its general usage on the day of visit by SEBI officials, which was done at the instruction of SEBI Officials during their visit. The terminals where PMS was specified were pre-dominantly used for PMS transactions and not exclusively used for PMS transactions.*
2. *It was also submitted that the dealer who was doing PMS transactions on the day of visit was earlier in IMON-PMS dealing and the inter departmental letter substantiating our submission was relied upon. Reference was made to Annexure 11 (at Pg. 37) filed along with 5CN reply.*
3. *It was also submitted that PMS Regulations do not specify that a dealer of Stock Broker should deal only for PMS clients. Reference was made to Para 35 of the SCN reply in this regard.*
4. *We also humbly submitted that merely because common terminal was used to execute trades of PMS and non PMS clients, it cannot be deemed that we have provided PMS services to all broking clients whose trades were executed through such terminal.*
5. *We also submitted that clients have confirmed through letters / mails that they are availing only retail broking services. Reference may be made to Annexure 12 (at Pg. 38 to Pg 56) filed along with SCN reply in this regard.*

6. *Kind attention of the Hon'ble Adjudicating Officer (AO) is drawn to explanation / clarification on non - applicability of Regulations / Circulars that are reflected at Para 41 of the SCN reply.*

Response to observations in Clauses 4 C, D & E relating to KTM Investors:

1. *It was submitted that all 6 accounts of KTM investors were being handled by Mr.Kamlesh Mody.*
2. *Mr.Kamlesh Mody is a seasoned Chartered Accountant with more than 30 years of experience.*

3. *When we were questioned whether we had obtained any POA to execute transactions in the accounts of KTM investors, we clarified that we had not obtained any such POA.*

Re: 4C - Misleading the clients by understating tosses and overstating profits:

1. *It was submitted that allegations of KTM investors with respect to unauthorized trading, fraud, mis-representation, fraudulent sale of shares and all other allegations of KTM investors have been dismissed by independent and experienced IGRP members as well as Arbitrators of NSE. Copy of the IGRP order of Kamlesh Mody is filed with this submission for ready reference as Exhibit 2. It was also submitted that orders of remaining KTM investors are on similar lines and annexed to our reply to inspection report dtd. 12.07.2019.*
2. *It was humbly submitted that the Arbitration Awards were against KTM investors, they have accepted the Arbitration award, which upheld the directions of IGRP orders.*
3. *We also submitted that we had provided statements of Profit and Loss accounts to KTM investors and KTM investors have acknowledged these profit and loss statements wherein losses have been clearly intimated. The attention of the Hon'ble Adjudicating Officer (AO) was also drawn on stamps of verification of signature of clients at HO on page 60, 64 etc. of Annexure 13. Reference was made to Annexure 13 (at Pg. 57 – 167) filed along with SCN reply.*
4. *It was further submitted that KTM investors were provided with all the requisite documents mandated by SEBI like contract notes, daily margin statements, statement of accounts & securities, statement of transactions etc. from time to time.*
5. *It was also submitted that KTM investors were shared with SMS pertaining to each and every order placed by them and that they have confirmed all the trades over email. Attention of the Hon'ble AO was drawn to email confirmations copies which were relied upon as Annexure 18 (CD) filed with SEBI SCN. Printouts of some such acknowledgements are attached herewith as Exhibit 3 for ready reference*
6. *Upon a question being raised by the Hon'ble AO regarding the difference in amount of P&L in some statements, it was clarified that KTM investors had requested our staff to prepare statement based on a different method where he preferred to exclude certain transactions. The Hon'ble AO sought for evidence for our averment and in response thereto, the kind attention of the Hon'ble AO was drawn to email from TKM investors dated March 27, 2015 where in clause 6 quoted "Going forward, only ATM Options loss/profit to be calculated. Deep in the Money Options which sold merely for credit generation would not be considered". Reference was made to Annexure 16 (at Pg. 170) filed along with SCN reply.*
7. *It was further submitted that Letters / mails exchanged in March 2015 and April 2015 clearly bring out that there was a separate method for calculation as instructed by KTM investors and pay-outs would be done either for profits or for option credit selling. Reference was made to Annexure 14 -17 (at Pgs. 168 to 171) filed along with SCN reply. Important letters and mails are Filed with this Written Arguments as Exhibit 4 for ready reference.*
8. *We were also questioned by the Hon'ble AO as to whether we provide such statements to many clients, to which we replied that this was a requirement of KTM investors as*

visible from the letters and emails and that since he was a privileged client, our staff preferred to assist KTM investors with their request.

9. *It was also submitted that the allegations in the SCN were similar to those made by KTM investors in IGRP and Arbitration proceedings at NSE and that both IGRP and the Arbitral Panel dismissed all the allegations of KTM investors and no claim was allowed against us.*
10. *It was also submitted that IGRP constituted by NSE observed as under:*
    a. *"Based on the documents submitted and interactions during the meeting, it is observed that the complainant was well aware about the happenings in the complainant's accounts".*
    b. *"It is observed that the complainant was kept informed by the TM about the debit balances in the complainant's account through various statements such as P&L statements, margin statement and communication dt. December 10, 2015 which was acknowledged by the Complainant".*
    c. *"It is observed that the TM has followed existing guidelines prescribed by the regulatory authorities, while executing disputed trades"*
    d. *"TM provided P&L statements to the complainant in the format suggested by the complainant, which did not reflect M to M losses. This format was different from the regular format used by the TM. Variations in these two versions of P&L were clarified by the TM from time to time to the satisfaction of the complainant and this has been confirmed by complainant as could be observed from signature of the complainant with remark 'ok'".*
    e. *"It was also observed that the complainant has accepted various ledger statements and P&L statements from time to time by affixing the signature."*
    f. *"It appears that the relationship between the complainant and the TM was that of 'broker' and 'investor'. The TM also clearly stated this aspect. The complainant's dealings in the account were found to be independent of each other within KTM investors".*

11. *Some important communications which go to prove that KTM investors were informed about losses from time to time and KTM investors seeking payouts of Option Premiums are filed herewith as Exhibit 5.*
12. *It is submitted that Paras 42 - 56 of SCN reply may be referred to in this regard.*
13. *Kind attention of the Hon'ble Adjudicating Officer (AO) is drawn to explanation / clarification on non - applicability of Regulations / Circulars that are reflected at Pgs. 16 - 21 of the SCN reply*

Re: 4D - Losses are covered by premium on sale of options and shown only at the later stages:

1. *It was submitted that KTM investors have confirmed trades effected by **them** on a daily basis including sale of option contracts. Reference may be made to email confirmations filed as Annexure 18 (CD) to SCN reply.*

2. *The kind attention of the Hon'ble AO was drawn to the fact that KTM investors also took payouts of premium towards sale of options to the tune of Rs. 8:16 crores and are well aware that these were options premium pay-outs. Records of meetings with KTM investors and emails filed as Annexure 14 - 17 (reflected at Pgs. 168 to 171) filed at along with SCN reply and also filed as Exhibit 4 above were relied upon.*
3. *It was also submitted that profit and loss statements reflecting losses have been acknowledged by KTM investors from time to time which go to prove that they were aware of losses in their accounts.*
4. *Once again it was submitted that IGRP members / members of Arbitral Tribunal had affirmed that the losses were clearly made known to KTM investors.*
5. *It is submitted that Paras 59 - 64' of SCN reply were referred to in this regard.*
6. *Kind attention of the Hon'ble Adjudicating Officer (AO) is drawn to explanation/ clarification non - applicability of Regulations / Circulars that are reflected at Pgs. 22 - 23 of the SCN reply.*

Re: 4E - Delayed pay in and Late pay in charges levied by the Member;

1. *It was submitted that with an intention to discourage clients from continuing debit balances, we prefer to levy Delayed Payment Charges (DPC), clauses for which are agreed upon in the agreement. KTM investors was charged DPC as per the relevant clause of the agreement. Kindly refer clause pertaining to Breach/ Default/ Death/ Insolvency at Pg. 21 of the KYC docket submitted herewith as Exhibit 6.*
2. *Kind attention of the Hon'ble AO was drawn to the fact that KTM investors have acknowledged Statement of accounts from time to time reflecting all financial transactions including levy of DPC. Reference was also made to Annexure 29 filed along with reply to inspection report -Annexure A (CD).*
3. *It is submitted that Paras 68 - 71 of SCN reply may be referred to in this regard.*
4. *Kind attention of the Hon'ble Adjudicating Officer (AO) is drawn to explanation / clarification on non - applicability of Regulations / Circulars are reflected at Pgs. 24 - 25 of the SCN reply.*

Response to observations in Clause 4F - Non Settlement of inactive clients for an amount of Rs.63.94.5432.85:

1. *It was submitted that over a period of 24 years of our business operations certain balances got accumulated despite our attempts to settle the same. As a result, the balance of clients observed in the SCN was about Rs.26 lakhs of which certain accounts are admittedly settled and others could not be settled for valid reasons explained in our SCN reply.*
2. *It was also submitted that out of the 56 inactive clients having a fund balance of Rs.26,66,395.28, we have settled Rs.19,40,636.85 amounting to 72% of the unsettled amounts and we are continuously trying to settle the remaining fund balance.*
3. *It was submitted that reference may be made to Annexure 21 (at Pg. 261 to 285) filed along with SCN reply evidencing settlement of funds to clients.*

4. *It was also submitted that reference may also be made to statement of accounts pertaining to yet to be settled clients which reflect the payout attempts made by us filed as Annexure 22 (at Pg. 286 - 319) filed along with SCN reply.*
5. *We have segregated the funds of these clients and have converted them in FDs as per guidance received from Exchange. We have now identified a separate bank account and are moving funds to the said accounts in line with Exchange Circular dt. 10.02.2020.*
6. *It is submitted that Paras 74-82 of SCN reply may be referred to in this regard*

Response to observations in Clause 4F - Non Settlement of securities balance amounting to Rs.37.28.147.57:

1. *As regards non settlement of securities balance, we submitted that settlement could not be effected for various reasons including closure of demat accounts, non-availability of PAN, securities ineligible for inter-depository transfers, suspended securities etc. which have been outlined client wise in our SCN reply.*
2. *It was further submitted that we have taken all possible effort to settle the securities of inactive clients and have settled securities worth Rs.28,90,096.40 which works out to 79% of the total value of unsettled securities.*
3. *We also pointed out that due to the below reasons securities worth Rs.8,38,051.17 could not be settled. But all these securities are lying in separate accounts which are freezed / closed status*

Reason	***Value of Securities***
Securities not traded/ Suspended	*3,58,931.12*
Invalid Pan	*4,09,153.05*
Securities that could not be transferred due to non-availability of ISIN in the Depository in which client has got demat account	*69,967.00*
Grand Total	***8,38,051.17***

4. *It is also submitted that instance wise response for clients was also explained and Paras 83 - 91 of SCN reply was referred to in this regard.*

Response to observations in Clause 4G - Delay in uploaded client details to CKYC system:

1. *It is submitted that out of total list of S cases, details of 5 clients were already available with CKYC as such there was no need for us to upload the data to CKYC as KYC details did not undergo any change and the copies of screenshot reflecting the details of KYC updated at CKYC prior to the date of account opening was enclosed as Annexure 16 (Colly - CD) to our reply Inspection Report - Annexure B.*

2. *It is further submitted that with respect to other 3 clients we have uploaded the KYC details on time, but the same was rejected due to name mismatch between Income Tax database and NSDL PAN database, delay in receipt of documents from KRA, account opened prior to the implementation of CKYC circular.*
3. *It is submitted that Paras 92 - 96 of SCN reply may be referred to in this regard*

Response to observations in Clause 4H - No dedicated E-Mail id for redressal of grievances;

1. *It is submitted that we have the following dedicated email ids for receipt of complaints from trading / demat account customers:*
    a. *care.stocksandsecurities@aditvabirlacaDital.com*
    b. *dpcare.stocksandsecurities@adityabirlacapital.com*
    c. *abml.chn.compliance@aditvabirlacapital.com*
    d. *abml.investorgrievance@aditvabirlacapital.com (exclusively for shareholders)*
2. *It is further submitted that these email ids have been communicated to customers through almost all documents shared with them as well as through notice boards displayed at branch locations. These email ids are also published on our website alongwith IG email ids of Exchanges / Depositories.*
3. *It is submitted that Paras 97 -102 of SCN reply may be referred to in this regard.*

Response to observations in Clause 41 - SMS alert facility not enabled in the Depository Participant Module (PPM) and Power of Attorney (POA) activated without obtaining mobile number from the client:

1. *It is submitted that SMS alert facility flag was flagged in our LD DP Back office system for all the 50 clients however while transferring the data from the LD DP Back office to DPM, due to some technical issue, the same was missed out for 8 clients.*
2. *It was also submitted that the status was set right at a later date and evidence for the same is submitted in the form of Exhibit 7 to this Written Arguments.*
3. *It is submitted that Paras 103 -105 of SCN reply may be referred to in this regard*

Response to observations in Clause 4J- in 160 instances. Securities with value of Rs. 5.41.502.76 were transferred from client demat to pro account:

1. *It was submitted that shares worth Rs. 2.38 lacs (involving 77 instances) were purchased on various occasions through our trading accounts bearing nos. 803 & 806 for testing purpose and were lying to the credit of the company. Contract notes evidencing the same are filed herewith as Exhibit 8 for ready reference.*

Screen shots of NSE UCC portal evidencing the ownership of the said trading accounts are also filed herewith for ready reference as Exhibit 9 to this letter.

2. *It was further submitted Rs. 2.53 lacs are due to impossibility of transferring 3rd decimal units to clients in case of Liquid Bees which got accumulated over several years. Further we have not disposed of these securities and are agreeable to deposit it to the IPF or any other funds as directed by SEBI.*
3. *It was further submitted that Rs. 50 thousand was due to settlement of corporate action received in fractions where credit was given to individual clients for their value fractions.*
4. *It was further submitted that shares involving all 160 instances were continuously held in our Margin and Client Beneficiary Account till August 2018 and based on the advice of the inspection officials of NSE as old system of client beneficiary account was being replaced with "Client Unpaid Securities Account" and these were not unpaid securities and therefore could not be transferred to "Client Unpaid Securities Account".*
5. *It was further submitted that there is no disproportionate gain or unfair advantage to us due to the retention of such credit and the Notice also does not allege any such disproportionate gain or unfair advantage.*
6. *It was also submitted that no loss has been caused to the investors and there has not been a single complaint to that effect from any client.*
7. *It was also pointed out that the observation of SEBI is a one off instance as SEBI has inspected on several occasions, but we have never been penalized for any of these violations or subjected to any notice.*

8. *It is submitted that Paras 106 - 111 of SCN reply may be referred to in this regard*

PRAYER:

The above details / documents and submissions would clearly go to prove that we have conducted our business in accordance with the Acts, Regulations, Guidelines, Rules, Byelaws and Circulars of SEBI / Exchanges etc. as such are not in violation of SEBI Circular / NSE Circulars / Byelaws / Regulations indicated in the SCN.

We therefore pray that our submissions to the inspection report and to the SCN along with the supporting documents / these written arguments be considered and the SCN be disposed of without any adverse inference against us

8. Supplementary Show Cause Notice dated August 25, 2020 was issued to the Noticee. The following Annexures were enclosed in the Supplementary SCN and the specific clauses of the SCN they are relevant to are given below -

Annexure	Relevant to Serial no of SCN
FI	4A
FII	4C

FIV	4D
FV	4E
FVI	4B
X	*Contains Annexures further referred in the aforementioned annexures*

The observations and allegations in Annexures FI, FII, FIV, FV, FVI are as follows –

i. **Annexure – FI : Carrying out PMS activity for broking clients**

ABML is registered with SEBI as a Portfolio Manager also but clients mentioned in the Table I were not registered as clients under their Portfolio Management Services but only availing trading and depository services of ABML. However, it was observed that in the SOA of certain clients, the term “Product-OAS” was used and interactions with these clients were through Wealth Management Division of ABML.

On seeking clarification of the term ‘Product’, ABML has submitted that they do not have any products. They have, inter-alia, stated as follows: These are nothing but facilities provided to customers to track their investments. "Product" nomenclature was done only from an information technology perspective by the software vendor and not from a process perspective. We would like to submit that customers used these facilities to track their transactions effected in both cash as well as derivatives segment. No additional documents / agreement / communication / criteria is exchanged / executed with customers with respect to these facilities. No additional fee is charged to customers for availing these facilities. All customers trade in their individual capacity only and place orders through their respective dealers. No additional reports / documents are shared with customers who avail these facilities. Wealth Management Division belongs to Aditya Money Mart Limited which is a registered Authorised Person of Aditya Birla Money Limited. Aditya Birla Money Mart Limited is a referrer/ distributor of various financial products / services to its customers like Mutual Fund products / Broking services / PMS products / Bonds etc.

As mentioned above, it is observed that trading was done by the Broker on behalf of their clients in these cases. The role of the Stock Broker is to execute the trades specified by their clients. They may provide investment advice which is incidental

to their business. In the instant case, even if it is treated so, the same is not in compliance with Regulation 9 read with Code of Conduct prescribed in Clause (B) (7) of Schedule II in SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 and Regulation 4 (g) read with Regulation 15 (9) (read with Clause (1) and (2) of Code of Conduct specified in Third Schedule), Regulation 16 (a), 16(b) and 17 and 18 (1), 18(3), 18(6) and 18 (7) of SEBI (Investment Advisors) Regulations, 2013, as, for example, Mr. Alexander Luke was a retired person and ABML has not done any risk profiling and suitability study before providing these recommendations for trading in options segment to the said client

However, these services are not just the investment advices provided by the Stock Broker, which is incidental to their broking service, for each of the findings mentioned below. By the following findings, it prime-facie appears, they have done Portfolio Management Services for these clients without entering into any agreement:

1.All the trades of clients from KTM Investors and Mr. Luke were initiated and executed by ABML. On a few instances, representatives of ABML had sent their recommendations to the investors requesting for consent to trade after which trades were executed. But in most instances, trades were executed by the ABML representatives and confirmation were obtained from the investors, post execution of the trades. This could be observed from the details provided by ABML on authorizations of their clients in respect of trades executed on behalf of them - (Emails sent by ABML, after execution of trades of KTM Investors, to Mr. Kamlesh Mody seeking his consent; and call records of conversations between ABML representatives and Mr. Luke for obtaining his consent after execution of the trades by ABML) (Annexure C). Thus, it could be stated that the client had a very passive role in the trades that happened in their account.

2.In one of the emails of ABML dated April 13, 2016 to Mr. Luke (as annexed by the complainant) (Annexure A – Page 90), it is observed that representatives of ABML (Dealer- Wealth Management) gives recommendations of Research and seeks his consent to place the orders and avail positions in his account on the basis of the said recommendation, as per the available Margin. It is further stated in the said email that “in case our research department modify their recommendations

during intraday, Can we modify the changes as per recommendation, please confirm".

This kind of consent would allow the Stock Broker to trade at his discretion using client's funds and securities. This indicates, the consent of the client was a mere formality and the trades were broker driven i.e. the decisions were taken by ABML and trades were placed accordingly, which is not in line with the normal trading relationship between the Broker and the client.

3.It is observed from email dated February 18, 2016 of Mr. Thukral to Mr. Luke, that his client ID is mapped against the Category - "managed trades". (Email I in Annexure D).

4.It is observed that with respect to a few clients, same recommendations were given / same strategy was followed in execution of trades by ABML. (For example, the trades executed for a few clients in the month of April, 2015 and September, 2015 given in Annexure E). From the same, it could be observed that option contracts at the same strike price is taken for the same expiry periods, where only the quantity of the contracts bought /sold differ according to the balances available in the clients account. The same trades were carried out irrespective of the profile of the client including age, risk taking ability, financial status, trading history, etc. For example, Mr. Luke was a senior citizen retired from service. However, there was no difference of the strategy observed wrt trades executed on his behalf and on behalf of KTM Investors, although some of the investors in KTM Investors, are younger in age as compared to Mr. Luke.

The above mentioned paragraphs indicates that the clients were playing only a passive role and all the decisions regarding trades were taken by representative of ABML, in these cases, by Mr.Hemant Thukral (Emails placed at Annexure –D and a few sample emails and voice logs placed at Annexure F).

5.It was further observed that irrespective of the location of the clients, trades are executed from a single terminal id- Terminal No.26140 (as per the Derivative Transaction register provided by the Stock Broker and the information provided by

NSE) and the said CTCL terminal situated at Cello Triumph, Unit No. 501-503, 505 & 401, I.B.Patel Road, Off W.E.Highway, Goregaon East, Mumbai. For example, the table given below on the location of few clients (in Product OAS) for whom the trades were executed through Terminal no. 26140 may be seen:

Table I

Client code	Client Name	Location
901034	Alexander Koipuram Luke	Kollam
	KTM Investors	Mumbai
30637	Vijay S P	Madurai
36253	Wilson Lawrence D Souza	Udipi
112009	Basi Reddy Bhaskar Reddy	Hyderabad
373073	Dharmeshkumar Prabhudas Patel	Anand, Gujarat
723140	Gurmeet Singh Marok	Jaipur
766368	Rayan Markkar Omar	Thrissur
791738	Anurag Gupta	Kanpur
915394	Sachin Jain	Ludhiyana
926485	Rishi Patney	Ambala
1025345	Harshad Gordhandas Doctor	Mumbai
1025605	Smita Snehal Sanghavi	Mumbai
1028411	Ajaykumar Jayantilal Patel	Navsari
911298	Gouri Arvind Kapoor	Mumbai
1026237	Shaikh Luqman Abdulsamad	Pune
1026215	Abdulsamad Sahebmiya Shaikh	Pune

Thus, it is observed that for mapped clients classified as OAS Clients, irrespective of their location, the trades were being executed through this terminal in Mumbai.

6. Normally, clients instructs the persons at the dealing desk of the Stock Broker for execution of trades. However, with respect to Mr. Luke and KTM Investors, Mr. Thukral, Head of Technical Research and Derivatives, directly dealt with them, providing recommendations, interacting through emails, phone calls and sending customized statements, which indicates the services provided by ABML to these clients were much more than broking service.

7. On examination of Statement of Accounts ("SOA") for a few clients for FY 2014-15 and 2015-16 (having Unique Client Code 901034, 1025547, 913103, 913134, 913133, 913093, 1002271, 1014213, 1030764, 1025345, 1030338, 1030445,

1025605, 1028411, 911298, 1026237, 1026215, 911246 and 914630), it is observed that they are categorized as “Product-OAS” in SOA and these clients are also marked as Product OAS in their Back office of ABML.As mentioned in the table mentioned in Page 6, there were around 326 clients were categorized as “Product-OAS”. (Sample SOA placed at Annexure-G)

8. It is claimed by ABML that no additional reports / documents are shared with customers who avail the facilities –Product OAS. However, it is observed that ABML was providing ‘Profit and Loss Statements ’to KTM Investors and Mr. Luke. A Stock Broker is not required to send a Profit and Loss Statement. It is stated by ABML that the Profit and Loss statements are provided to customers in the ordinary course of business and also based on the request of customers. It was stated by ABML that Mr. Kamlesh Mody sought Profit and Loss Statement through email dated June 07, 2016. However, it was observed that ABML has been providing ‘Profit and Loss Statement’ even before this date (emails at Annexure-H). It is further observed that all the profit and loss statements sent by ABML were not supported by clients’ requests.

Apart from the above, it is observed that Mr. Hemant Thukral was even providing ‘estimated Profits’ in respect of contracts expiring every week for Mr. Alexander Luke (Emails dated 03/12/2015, 12/04/2016, 13/04/2016, 09/05/2016, 10/05/2016, 11/05/2016, 12/05/2016, 16/05/2016,17/05/2016, 21/06/2016, 22/07/2016, 08/10/2016, 10/10/2016, etc.) providing Estimated Profit and Loss Account for contract yet to expire or sold (sample of emails placed at Annexure-I).

The role of a stock broker is to execute the trades as directed by the clients. Being so, sending of such estimated Profit and Loss Accounts may be done by ABML to give hope to the clients regarding their future profits and would have led them to provide consent to ABML for the executed trades.

9. An email was sent from Mr. Hemant Thukral dated 23/12/2014 and another from Mr. Vishal Muni dated 09/01/2015 to Mr. Kamlesh Mody providing “Mody family Profits & Pay-outs for FY 2014 – 2015”and “Profit Payout in Rangraj Till date details “respectively-i.e. Profit payouts made from April 2014 to December 2014 for KTM

Investors. It contains column for Deposit Returned, Family Profits, Adjusted Credit amount for Rangraj & Leena Mody, Net Gross amount till November 2014 and total payout done and Net buffer. (Annexure D – Email II & III).

Further, Mr. Hemant Thukral had provided hard copy of the documents claiming to be Profit Arms Docs (Annexure-J) on 29/05/2015 and 01/01/2016 to Mr. Kamlesh Mody (representing KTM Investors). In these Profit Arm Docs, the figures concerning profit "payout given" to KTM Investors for FY 2014-15 and 2015-16 were given. Further, the terms- "Arbitrage Fund Return", "Deposit Returned", "Loss entry 64 Lakhs", "Family Profits" "Net Gross Amount " "Payout done" and "Net Buffer" were used among other things. Mr. Hemant Thukral has also stated in Hard Copy in writing that "No Roll over Losses considered, Booked arms profits" and "I have explained all are book profit arms, no -roll over considered". However, it may be noted that no such statement that no Roll Over Losses considered was appearing in the abovementioned emails dated 23/12/2014 and 09/01/2015, which is misleading.

On examination of the Statements of Accounts provided by ABML to these clients, it is observed that certain payouts were made on monthly basis and the amount paid exactly tallied with the month-wise profit payouts mentioned in the Profit Arms Statements provided through emails and hard copy, as mentioned above. (Annexure-K)

This indicates that, as alleged by the clients, Mr. Hemant Thukral had promised profit payouts to the clients at the end of every expiry period from 2014-15 and 2015-16. The terms "Arbitrage Fund Return" and "Deposit Returned", indicates that ABML was not only providing broking services, but managing the funds and securities on behalf of these clients.

Further, following emails were perused:

i. In one of the email dated March 10, 2015 of Hemant Thukral to Mr. Kamlesh Mody, it is stated that "Could not get why confidence in accounts is lost, 67 Lakhs was current year, 30 lakhs is entry rolled; already 3 lakhs profit in March one round booked Profit is showing 1.01 Cr. " (Annexure D -Email IV).

ii. Vide email dated February 4, 2015, payouts made by ABML to KTM Investors were communicated by ABML. Mr. Kamlesh Mody replies stating, 'what is the return on investment on arbitrage business' and also seeks clarification wrt to payouts made to the investors in KTM Group. The same is replied vide email dated 04/02/2015 by Mr. Vishal Muni of ABML clarifying in Leena Mody profit is Rs. 12500 on sum of Rs. 1000000/- (1.25%) In kamlesh HUF profit is Rs. 5700 on sum of Rs. 500000/- (1.14%)" ((Annexure D -Email V).

iii. Mr. Hemant Thukral of ABML vide email dated 27/06/2014 states to Mr. Kamlesh Mody that payout made to accounts of Ms. Mitali Mody, Ms. Sonali Mody and Mr. Kamlesh Mody is Rs.4.5 Lakhs each and further states these are only profit figures (Annexure D -Email VI).

iv. In case of normal broker and client relationships, there was no need for the stock broker to state that profits were booked. The tone of these emails indicates that the funds and securities were managed by ABML on behalf of these clients. Hence, the activity has to be considered as Portfolio Management Services.

11. Normally, for taking fresh positions, Broker requests for pay-ins by their clients. However, wrt Mr. Luke and KTM Investors, it is observed that only in a very few instances, pay-ins were made by the clients, most of the instances the Broker was managing the trades with the initial pay-ins and security brought in by the clients as collateral. Even when the client's SOA is showing debit balances or when NSE was charging penalty for Margin Shortfall, the stock broker, without seeking pay-ins from the clients (instances are detailed in Annexure FIV and FV), was managing the trades and was taking fresh positions.

12.Mr. Alexander Luke had stated in his complaint that Mr. Hemant Thukral persistently followed up with him when he was abroad that he should sell his shares and buy Futures in those stocks and mentioned those instances in his complaint. It may be noted that in the said instance, calls were made to the client seeking his prior consent, instead of obtaining his consent post execution, may be because of the fact that this transaction not only involved dealing in derivatives segment on his behalf, but also for selling of his shares. When the client was abroad and stated so, the reason and urgency for the Stock Broker

for persistently contacting him and seeking to execute a transaction is questionable, especially when the broker had collaterals given by the clients. In normal course, if there is a failure on the part of the clients to bring in necessary pay-ins, Broker can refuse to take additional positions, without further pay-ins by the client and may sell the collateral to realize the money due, after intimation.

13. It may be noted that Portfolio Manager cannot leverage the portfolio of the clients in respect of investment in derivatives. However, in the instant cases, since the broker has classified them as broking clients, they had managed to execute such trades even when they do not have sufficient balances to take fresh positions. Further, it was also seen that on those occasions, Delayed payments and Late Payment Charges were charged. The total Delayed (payment/payin) and Late Charges charged from the said clients' Financial Year wise is as follows (Annexure-L).

Table II

Year	Delayed Payment and Late Pay-in charges	
	Aggregate for KTM Investors	Mr.Luke
2014-15	14,03,162.81	3,42,971.21
2015-16	1,28,65,859.41	10,83,687.07
2016-17	44,40,273.60	4,90,049.71

Thus, by initiating trades on behalf of the client continuously without obtaining their prior consent, the stock broker has earned substantial sum as Delayed payments and Late Payment Charges, which is prima-facie in lieu of portfolio management fees.

All the aforesaid findings above like execution of trades without prior permission and at single location, following same strategy for clients, usage of terms such as "Product OAS", "managed trades", "arbitrage return", providing additional statements like P&L, estimated P&L etc., indicate that these clients were not only provided broking services or investment advices by ABML, which are incidental to broking activity. It prime-facie appears that ABML has done Portfolio Management Services for these clients without entering into any agreement. Further, it primefacie corresponds with the allegations made by the complainant regarding the presentations made by ABML and the features of the scheme offered, which is seems to be deceptive.

Thus, ABML has prima-facie violated Section 12 of the SEBI Act read with clauses A (3), (5) and (B) (7) of Code of Conduct for brokers specified in Schedule II read with Regulation 9 of the SEBI (Stock Brokers and Sub-broker) Regulations 1992 (hereinafter broker Regulations) and Regulation 14 of SEBI (Portfolio Managers) Regulations 1993.

ii. Annexure FII :

A. **Misleading the clients by understating losses and overstating profits**

A.1. **Profit Pay-outs:**

As per SEBI Circular, in case Running Account Authorization is obtained from the clients, a stock broker should settle the client's account atleast once in calendar month/quarter, as agreed with the client.

As per the Settlement Policy of the Stock Broker, it is stated that ABML would settle the accounts for each client and the time difference between two settlements will not be more than 90 days and that settlement shall not be on a particular date for all the clients. It is also stated that while arriving at the list of clients who would be eligible for the quarterly settlement of account, the following criteria will be adopted and followed consistently:

- Clients having open positions in the last month of the Quarter, margins available to the extent of 225% will be retained as a standard / uniform approach to meet the maximum likely margin obligations as an abundant precaution, for the next 3 trading days or thereafter, in order to ensure such clients do not get into a square off mode or hassles unnecessarily. Any balance available post the above retention, will be released to the client as part of the quarterly settlement process.

A.1.1. It may be noted that the KTM Investors had alleged that Mr. Hemant Thukral represented that Profits in Option Contracts (which expires every month) will be settled on monthly basis.

It is observed from the SOA of client codes (913103, 913134, 913133, 913093, 1002271, 913383) that during the course of trading by these clients, several payouts were made by ABML to these clients, almost on monthly basis and in some cases more than once in a month (SOAAnnexure -G). It is also observed that vide email dated October 12,

2015, Mr. Hemant Thukral stated to Mr. Kamlesh Mody that in all our accounts payment regarding Options strategies, as discussed will be released on 20th of this month. (Annexure M)

ABML stated that the Company has effected timely payout of eligible securities and eligible funds i.e. ABML has paid out free balances of funds and securities, as and when the same was sought, as per the applicable rules and regulations of SEBI and Exchange. ABML stated that on certain occasions they had also paid some amounts based on the requests of the complainant, though KTM Investors were not eligible for such pay-outs (due to utilization of their funds and securities for transactions at that point of time), post taking approvals.

It is observed that, as alleged by KTM Investors, Payouts made by ABML had no specific periodicity or correlation with the profit and loss statements, even though they were referred to as "profit pay-outs". No specific reference as to the basis of pay-outs are mentioned in the ledger statements or in retention statements. Neither ABML could provide evidences indicating that all such pay-outs were backed by client's requests.

A.1.2. In order to verify the quarterly settlements made to these clients, ABML was advised to provide the dates on which the settlements were made to these clients along with amount released. It was observed from the details provided by ABML that during 2014-16, ABML has not released any amount as Quarterly settlement for KTM Group of clients and retained the funds and securities stating that the same is retained for meeting 225% of T Day Margin Requirement in Derivatives segment as prescribed by the Stock Exchanges.

However, perusal of the SOA indicates a different picture, as within a few days from the settlement date, pay-outs have been made to the clients which are matching with the profit pay-outs as stated in the emails and Profit Arm Document. Details are given in the below mentioned table:

Table I

Name of the Investor	Date on which Settlement done as per SEBI requirements	Amount Released	Date of Payout made	Payout made as per SOA and stated as "Profit Payout" as per Profit Arm Document emailed

	(as provided by ABML)			and provided by Mr. Hemant Thukral (In Rs)
Kamlesh Mody	29-05-2014	0	02-06-2014	5,00,000.00
Kamlesh Mody	30-07-2014	0	01-08-2014	4,08,000.00
Kamlesh Mody	27-11-2014	0	02-12-2014	5,08,000.00
Kamlesh Mody HUF	27-11-2014	0	02-12-2014	5,06,000.00
Leena Mody	21-11-2014	0	02-12-2014	8,90,000.00
Leena Mody	16-11-2015	0	30-11-2015	21,00,000.00
Mitali Kamlesh Mody	11-07-2014	0	01-08-2014	3,88,000.00
Mitali Kamlesh Mody	26-02-2015	0	16-03-2015	3,50,000.00
Mitali Kamlesh Mody	06-08-2015	0	03-08-2015	4,75,000.00
Rangaraj Investment	27-08-2014	0	01-09-2014	18,25,000.00
Sonali Kamlesh Mody	23-04-2014	0	25-04-2014	1,50,000.00
Sonali Kamlesh Mody	30-08-2014	0	10-09-2014	2,61,000.00

This indicates that while ABML retained the funds with them on the stated dates, in which they have claimed to have made quarterly settlements, but within a few days, they have made pay-outs stating it as profit pay-outs to the investors.

A.1.3. Further, as seen from the below table, it is also observed that even these profit payouts were made when there was debit balance in the clients' accounts:

Table II

Name of the Investor	Date	Description / Narration	Balance before Payout (In Rs)	Payout as per SOA (In Rs)	Debit Balance after Payout (In Rs)
Rangraj Investments Pvt Ltd	26-Jun-15	Sett. Payout Abmoney	2,50,96,934.55 (Dr)	5,45,750.00	2,56,42,684.55
Alexander Luke	17-Aug-16	Sett. Payout Abmoney	91,78,606.23(Dr)	2,91,650.00	94,70,256.23
Kumar Suresh Oza	24-Nov-15	Sett. Payout Abmoney	21,38,070.74(Dr)	37,000.00	21,75,070.74
Mitali Kamlesh Mody	01-Aug-14	Sett. Payout Abmoney	-1,14,988.40 (Cr)	3,88,000.00	2,73,011.60
Mitali Kamlesh Mody	01-Aug-14	Sett. Payout Abmoney	2,73,011.59(Dr)	64,512.00	3,37,523.60
Leena Mody	19-Jun-15	Sett. Payout Abmoney	1,82,703.44(Dr)	96,000.00	2,78,703.45

A.1.4. Though ABML claimed that the pay-outs are paid out of free balances of funds and securities, as and when the same was sought, as per the applicable rules and regulations of SEBI and Exchange, it is observed that not all such pay-outs were backed by client's requests. Further, on perusal of emails dated 23/12/2014 of Mr. Hemant Thukral and dated 09/01/2015 of Mr. Vishal Muni of ABML, it is noticed that these pay-outs are stated as profit pay-outs. The said emails were providing "Mody family Profits & Payouts for FY 2014 – 2015" and "Profit Payout in Rangraj Till date details" respectively (Annexure D– Email II & III). KTM Investors were also provided with a hard copy of the "Profit Arm Document" signed by Mr. Hemant Thukral (Annexure J).

On perusal of the same, it is observed that it discloses the profit pay-outs made to KTM Investors for FY 2014-15 and FY 2015-16 on monthly basis.

On perusal of SOA for KTM Investors, it is also confirmed that the amount indicated as "Profit Payouts" were actually paid to KTM Investors. (Annexure K).

A.1.5. With respect to the Profit Arm Document, sent through emails (Annexure D – Email II & III) and as Hard copy (Annexure J), it was stated by ABML as follows:

As regards the hard copies which had payout details and gross profit and loss details (PDF named complete 14-15 & 15-16), we submit that the same was prepared at the behest / request of KTM Investors at various intervals.

The rationale behind the PNL figures and Payout figures given in Sheet 1 to 3 is as under:

1. Profit and Loss (PNL) figures are arrived at basis the difference between the total value of Bills (both Debit and Credit) pertaining to transactions carried out in Futures and Options segments by the respective KTM Investor and the Profit and Loss of Option positions of March 2015 as on the date of communication of the Sheet details to KTM Investors.

2. Payout details given in the sheet are actual payouts made to KTM Investors.

   For example the Profit and Loss of Rs.70,53,996/- was arrived at by taking into account by adding the difference between the Debit and Credit Futures and Options Bills in the trading account of Ms. Leena Mody during FY 2014-2015 and the Profit and Loss arrived on Options Positions of March 2015 as on the date of communication of sheet details with KTM Investors.

   The rationale behind the PNL figures and Payout figures given in Sheet 4 is as under:

   1. Profit and Loss (PNL) figures were arrived on a month on month basis by taking into account the net profits earned on closed option contracts in a given month and net profits of open options contracts whose strike price was near to the prevailing Nifty Settlement Price in the expiry week.

   2. Profit and Loss figures of open contracts which are Deep in the Money or Deep out of the Money were not taken into account for the purpose of reporting as

these contracts were either being rolled over by the customer or will have lost their value.

3. Payout details given in the sheet are actual payouts made to KTM Investors.

For example the Profit arid Loss figure of Rs. 3,15,000/- for the month of April 2015 was arrived at by considering the net profits of closed April 2015 option contracts and the net profits earned on Near the Money open option contracts excluding Profits and Losses gained / sustained on Deep in the Money or Deep out of the Money options which were open during the expiry week of April 2015. This calculation was compiled by the KTM Investors in the form of Sheet 4.

ABML has stated that Profit and Loss (P&L) figures were arrived on a month on month basis by taking into account the net profits earned on closed option contracts in a given month and net profits of open options contracts whose strike price was near to the prevailing Nifty Settlement Price in the expiry week. Profit and Loss figures of open contracts which are Deep in the Money or Deep out of the Money were not taken into account for the purpose of reporting as these contracts were either being rolled over by the customer or will have lost their value.

The "Profit Arm Document" mentioned in A.1.2 (Annexure D and Annexure J) mentions the profits made by the clients, pay-outs made and the remaining Net Buffer kept. These profit pay-outs (stated as so) are not reflective of true profits or loss of the clients during those months. The figures admittedly do not contain Profit/Loss figures of open contracts which are Deep-in-the-Money or Deep-out-of-the-Money and in some cases arrived at by adding the difference between the Debit and Credit Futures and Options Bills. There is no logic in excluding such open contracts which are Deep-in-the-Money or Deep-outof-the-Money for every month and thus, the true position to the clients were not stated through these statements or pay-outs. Thus, the pay-outs made, which are stated to be profits, is prima-facie to mislead the clients that they are making profits, when actually they were making loss (illustrated in the Para below), so that they continue to trade in the strategy offered by ABML.

A.1.6. It was observed that on each of the month when pay-outs were made, (which are stated to be profit pay-outs), for that expiry period the investors were actually suffering losses as per the Client Global Net Outstanding (Options Closing) Arbitrage Position) provided by ABML. To illustrate, few payouts made to Leena Mody along with the losses on those expiry periods are given below:

Table III

Name of the Investor	Date of Payout made	Payout made as per SOA and Profit Pay-out as per Profit Arm Document emailed and handed over (in Rs)	Expiry date	Loss (excluding Stamp duty, transaction charges, STT, Delayed payment charges and late pay-in Document emailed charges etc.) as per Profit and Loss Statement emailed by ABML (in Rs.)
Leena Mody	02-12-2014	8,90,000.00	27-11-2014	-2,51,223.75
Leena Mody	30-12-2014	7,50,000.00	24-12-2014	-70,03,809.00
Leena Mody	15-01-2015	5,50,000.00	29-01-2015	- 1,53,13,096.30

The day-wise pay-outs made to the investors as per SOA, which are stated to be profit payouts as per the aforesaid emails and the statement signed by Mr. Hemant Thukral and actual losses as per the Profit and Loss Statement for the corresponding period were given in detail in Annexure-K.

A.1.7. As mentioned above, the pay-outs were made stating as profit pay-outs, even when the profit and loss statements proivded to KTM investors - (i.e. Client Global Net Outstanding (Options Closing) Arbitrage Position statement) disclosed losses in each of these years. Those instances were examined in detail.

On analysis of pay-outs made by ABML for FY 2014-15 and FY 2015-16, which are stated to be Profit pay-outs as mentioned above, and the Profit and Loss statement - Client Global Net Outstanding (Options Closing) Arbitrage Position statement, following are observed:

Table IV

Particulars	FY 2014-15 (In Rs)	FY 2015-16 (in Rs)

Total of Profit payouts to KTM Investors as per Profit Arm Statement (Annexure-J), which tallies with the actual Payout made as per SOA	₹ 2,97,48,000.00	₹ 2,68,81,000.00
Approx. Loss by aggregation of Profit and Loss (Client Global Net Outstanding (Options Closing) Arbitrage Position statement) of KTM Investors, which excludes delayed Pay-in charges and Late Pay-in charges (Annexure-L)	(₹4.15 Crores)	(₹5.70 Crores)
Approx. Loss accumulated for KTM Investors after taking into account significant charges levied by ABML including delayed Pay-in charges and Late Pay-in charges (Annexure-L)	(₹4.33 Crores)	(₹6.97 Crores)

From the above findings mentioned in Point A1, the following is arrived at:

- ABML is providing Pay Outs in periodical intervals, without client's requests

- Further, vide various emails/correspondences, it is stated that these are profit payouts.

- Even the payouts are made, when there is debit balance and even without retention of Margin Money as required in NSE circular dated September 07, 2012 read with FAQ of NSE and NSE circular dated October 29, 2013.

- These are not actual profits. As on the date of pay-outs, the clients have not made profits, but have incurred losses.

- It prima-facie indicates that these payouts were made as profit payouts to clients to make them believe that they are making profits and to hide/understate the losses, so that they continue to trade in the strategy offered by ABML and thereby ABML continues to earn brokerage.

A.2. Differences in Profit and Loss Statements sent to Clients:

It is noted that KTM Investors received various profit and loss statements for the same period which are listed below:

a) Profit and loss statement provided through email by ABML representatives during continuance of trading (Annexure N)

b) Hard copies of profit and loss statement allegedly provided by Mr.Hemant Thukral (Annexure O)

c) Hard copies/emails of Profit arm documents provided by Mr Hemant Thukral and his team during the continuance of trading – indicating profit and pay-out. (Annexure J)

d) Profit and Loss statement provided by ABML - (Client Global Net Outstanding (Options Closing) Arbitrage Position statements), reflecting the Profit and Loss in the derivative positions for the client in that FY (Annexure P).

Out of the above-mentioned statements, Client Global Net Outstanding (Options Closing) Arbitrage Position statements is nearer to the correct position.

It was alleged by the KTM Investors that all the above statements are at variance with each other.

With respect to the aforesaid allegations, ABML has stated that having confirmed the transactions and debits sustained thereon in all accounts, the complainant cannot seek action against the Company on illegal grounds. Further they have stated that once a transaction is accepted / confirmed, the complainant is estopped from denying or challenging the same. ABML claimed that SEBI has never specified that Stock Broker shall provide profit and loss statements or bring the profits and losses to the notice of customers.

Further, with respect to the report of SKP Business Consulting LLP, ABML stated that the said third party report is not binding on ABML and the said report was prepared at the behest of the complainant and hence, no reliance ought to be placed on the same. Further, ABML raised strong objections relating to the bonafides, neutrality and impartiality, of the author of the said report and requested permission to appoint an independent auditor / consultant to verify the transactions effected by KTM Investors / processes adopted by ABML in dealing with KTM Investors and also on the documents / details contained in the consultant report and submit a detailed report which shall be submitted to SEBI for further action.

In this regard, it may be noted that ABML is not prevented from appointing any auditor to verify the report. However, SEBI's inspection is independent of the same.

A.2.1. On verification of documents, it was observed that there is substantial difference between the figures in the Profit and Loss Statement sent by representatives of ABML through emails, hard copy of Profit and Loss Statements received by Mr.Kamlesh Mody on behalf of all KTM Investors, and the Profit and Loss Statements received by KTM Investors - Client Global Net Outstanding (Options Closing) Arbitrage Position statement.

A.2.2. In this regard, ABML has also stated, inter-alia, the following:

- The said documents are derived from the back-office system based on various parameters and is then worked upon manually which might lead to mismatches. Further LD system also provides for generation of reports based on various permutations and combinations like report with brokerage / without brokerage / with charges / without charges etc. LD System also follows the model of posting entries on T+l or T+2 basis and also follows financial year for closing of accounts.

As such financial accounting pertaining trades effected on the last trade date of a given financial year will get reflected in the statement of accounts (ledger) of the next financial year.

Likewise, if derivative contracts are purchased in the preceding financial year, the same would get completely closed in the next financial year. Such positions would get reflected as open positions and the methodology used for closing such reports may differ. As such some minor differences crop up when different reports are compared.

The consultant had wrongly compared the Client Global Net Outstanding (Options Closing) Arbitrage Position file shared by customer care department of ABML and the Client Wise Global Net Position (Derivative Cumulatives) shared by branch. If any of the parameters are given incorrectly the entire report will have mismatches.

Furthermore, upon verifying the Client Global Net Outstanding (Options Closing) Arbitrage Position shared by customer care of ABML it is observed that the same is devoid of brokerage charges and as such any result derived based on comparison with this report would be incorrect.

We would like to submit that the difference is again due to the report date parameter as well as open positions valuation i.e. how the profit and loss for open positions were calculated. We are still in the process of retrieving mails sent to KTM Investors. Some mails were retrieved. Upon verification of the details shared it transpired that the difference was due to positions which remained open in the previous financial year and which got closed in the subsequent financial year.

A.2.3. It is observed that Profit and Loss Statements concerning KTM Investors were emailed to Mr. Kamlesh Mody by ABML representatives during continuance of the trade. Following emails were perused (Annexure N):

Table V

Email from	Date	Time	Client Account	P&L period
Vishal Muni	04/06/13	18:38	Leena Mody	2012-13
Kalpesh Aravindbhai Maniar	04/06/13	15:24	Leena Mody	2012-13
Anand Moha	05/08/13		Leena Mody	2012-13
Vishal Muni	06/08/13	11:35	Leena Mody	2012-13
Hemant Thukral	10/03/15		Leena Mody	2014-15
Hemant Thukral	19/04/14		Kamlesh Mody	2013-14
Hemant Thukral	19/04/14		Sonali Mody	2013-14
Hemant Thukral	19/04/14		Mitali Mody	2013-14
Vishal Muni	06/08/13	12:14	Rangraj Investments	2012-13
Vishal Muni	04/06/13	18:01	Rangraj Investments	2012-13
Vishal Muni	06/08/13	10:56	Rangraj Investments	2012-13
Kalpesh Aravindbhai Maniar	04/06/13	15:24	Rangraj Investments	2012-13
Hemant Thukral	14/05/14		Rangraj Investments	2013-14

It is observed that the some of the P&L Statements attached in the emails for the same periods are at variance with each other.

A.2.4. Further, with respect to the hard copy of the profit and loss account (Annexure O), allegedly received by the KTM Investors, ABML had stated that it did not match with any of the profit and loss statements generated from their back-office systems and hence, could not have been shared by ABML. However, the same cannot be accepted, as it is observed that the same copies were shared by the representatives of ABML to the KTM Investors through emails mentioned in above paragraph A.2.3.

A.2.5. On comparison of the hard copy of Profit and Loss Statement given to KTM Investors (Annexure O) and those which are also been emailed (Annexure N) with the Client Global Net Outstanding (Options Closing) Arbitrage Position (Options Closing Arbitrage Position) (Annexure P) - (Profit and Loss Statement which reflects the Profit and Loss in the derivative positions by the client in the FY - which is near to the correct position), there were significant differences in the Profit and Loss Figure stated between both the statements:

Table VI

	FY 2012-13	FY 2013-14	FY 2014-15
Kamlesh Mody			

Loss as per HT email dated 19/04/14 and Hard copy received		-81,270.48	
Loss as per P&L - Options Closing Arbitrage Position		-15,01,429.98	
Profit as per Hard copy			4,09,845.33
Loss as per P&L - Options Closing Arbitrage Position			-35,18,742.78
Kamlesh Mody HUF			
Profit as per Hard copy			17,21,387.62
Loss as per P&L - Options Closing Arbitrage Position			-43,60,782.22
Leena Mody			
Loss as per P&L statement provided as per Email of Kalpesh Aravind Bhai Maniar on 04/06/13 @ 15:24	-1,71,531.74		
Loss as per Hard copy and Email of Vishal Muni on 04/06/13 @ 18:38	-3,56,176.24		
Profit as per P&L - Options Closing Arbitrage Position	1,92,749.89		
Profit as per Hard copy		3,40,133.32	
Loss as per P&L - Options Closing Arbitrage Position		-54,59,884.73	
Profit shared as per Email of HT on 10/03/2015 (for 201415)			1,00,31,244.48
Profit as per Hard copy			32,59,499.48
Loss as per P&L - Options Closing Arbitrage Position			-2,53,67,234.94
Mitali Mody			
Loss as per Hard copy and Email of HT 19/04/14		-87,376.27	
Loss as per P&L - Options Closing Arbitrage Position		-13,86,056.77	
Profit as per Hard Copy			27,52,765.00
Loss as per P&L - Options Closing Arbitrage Position			-6,68,638.17
Sonali Mody			
Loss as per Hard copy and Email of HT 19/04/14		-70,058.23	
Loss as per P&L - Options Closing Arbitrage Position		-10,75,023.23	
Profit as per Hard Copy			23,50,735.07
Loss as per P&L - Options Closing Arbitrage Position			-25,74,813.78
Rangraj Investments Private Limited			
Loss as per Email of Vishal muni dated 06/08/2013	-2,06,385.56		
Loss as per Hard copy and Email of Vishal muni dated 04/06/2013	-2,38,773.00		
Loss as per P&L - Options Closing Arbitrage Position	-84,860.92		
Profit as per Hard copy and Email of HT 14/05/14		40,52,295.89	
Loss as per P&L - Options Closing Arbitrage Position		-99,86,985.86	

Profit as per Hard copy			73,58,731.75
Loss as per P&L - Options Closing Arbitrage Position			-49,63,350.36

As could be observed from the table, the profit and loss statement sent by ABML representatives through email and hard copy at completely at variance with the actual position and had understated the losses and shown fictitious/overstated profits.

The argument of ABML that Client Global Net Outstanding (Options Closing) Arbitrage Position file shared by department of ABML and the Client Wise Global Net Position (Derivative Cumulatives) could not be compared and the difference is due to the brokerage, open positions and parameters chosen at the time of generation of the report may not be acceptable. The reason being that the Broker is expected to provide the report to the client which reflects true and actual position and the statement which does not mislead the client. It is the responsibility of the broker to ensure that its employees and representatives provide correct statements to the clients at all times with proper internal control mechanisms.

A.2.6. Further, with a view to verify the difference between the Client Global Net Outstanding (Options Closing) Arbitrage Position and Client Wise Global Net Position (Derivative Cumulatives) in Derivative Segment, on sample check basis, both the said statements were generated for Ms.Leena Mody for FY 2014-15 and 2015-16. On perusal of the same, it is observed that the differences between both the statements are minor and only relates to the open positions at the end of the financial year (Annexure-Q). Out of the same, it is observed that Profit and Loss Statement generated out of Client Global Net Outstanding (Options Closing) Arbitrage Position is statement which gives the nearest position- which reflects the positions as in the contract register of the client (even though the Profit/Loss calculated in such statement is not after deduction of delayed/late pay-in charges - Ideally, Profit or loss should indicate profit generated after all the expenses/charges/losses to reflect a correct position).

A.2.7. However, it is observed that the differences between the statements sent by ABML, were not only pertaining to the contract which are expiring at the end of the financial year (most of the statements were sent in email well after the last expiry period in the concerned FY) or due to non-inclusion of brokerage or other charges, as claimed by ABML.

To illustrate, for the client Mr.Kamlesh Mody, in the Hard Copy of Profit and Loss Statement and the Statement shared through email dated 19/04/14 (Client Wise Global Net Position(Derivative Cumulatives) by Mr.Hemant Thukral, the loss arising out of Call option Contract in Nifty 50 having expiry date 27/03/2014 @ strike price of 6500 is ₹ -1,94,863.00, whereas loss for the same contract as per Profit and Loss Statement - (Client Global Net Outstanding (Options Closing) Arbitrage Position) is ₹ - 2,96,272.50. It may be noted that the email was sent after expiry of contract dated 27/03/14 i.e.19/04/14 and the run date of the report is April 10, 2014. (Annexure O & P)

Similarly, for the client Rangraj Investments Private Limited, in the Hard Copy of Profit and Loss Statement and the Statement shared through email dated 14/05/14 by Mr. Hemant Thukral (Client Wise Global Net Position(Derivative Cumulatives), the loss arising out of Put option Contract in Infosys having expiry date 27/03/2014 @ strike price of 3800 and 3850 is ₹ -22,36,275.00 and ₹ -7,08,938.00 respectively, while loss for the same contracts as per
Profit and Loss Statement - (Client Global Net Outstanding (Options Closing) Arbitrage Position statement) are ₹-1,02,36,175.00 and ₹-82,02,487.50 respectively, this is due to difference in purchase value of the same contracts mentioned in both the statements (Annexure O & P). It may be noted that this email was also sent after expiry of contract dated 27/03/14 i.e.14/05/14 and the run date of the report is also 14/05/14. Irrespective of the name/type of the statement, it is the responsibility of the broker, to ensure that the statement sent shows the correct position to the client. These instances shows that the losses were understated.

As illustrated above, the contract values for the same contracts appearing in the hard copy version and those given in emails are at variance with the Profit and Loss Statement (given in Client Global Net Outstanding (Options Closing) Arbitrage Position) for the same contract. Further, on perusal of the differences in those statements, it is observed that even lot of contracts appearing in the Client Global Net Outstanding (Options Closing) Arbitrage Position were not shown in the hard copy version or those given in emails. All such contracts are listed in Annexure -R.

A.2.8. Further, it is observed that vide emails dated 12/10/2015, 17/11/2015 and 10/12/2015, Mr. Hemant Thukral had provided to Mr.Kamlesh Mody the (i) booked profit transactions for Aug-Sept., 2015, (ii) Option Profit arm payment for KTM Investors

(stating that the said payments will be disbursed by 23rd of Nov), and (iii) option profit arm pay-out due for October and November, respectively. (Annexure D- Email VII, VIII and IX). Though, Mr.Hemant Thukral has claimed Profit for August, September, October and November, 2015 in these emails, actually, as per the Client Global Net Outstanding (Options Closing) Arbitrage Position, the investor had made losses in most of the corresponding periods.

It is also observed that along with KTM Investors, Profits pertaining to Mr. Kumar Ohja was also being emailed to Mr. Kamlesh Mody, whereas Mr. Kumar Ohja was not part of the KTM Investors.

A.2.9. ABML in reply has given hard copies of few Profit and Loss Statements signed by investors stating that they have acknowledged the losses:

Table VII

Name of the Investor	Type of Statement	Period of P&L	Date of signature by the investor
Kamlesh Thokral Mody HUF	P&L (Option Closing)	Apr-Aug, 2015	19/09/2015
Rangraj Investments Pvt Ltd	P&L (Option Closing)	Apr-Dec, 2015	07/01/2016
Kamlesh Thokral Mody HUF	P&L (Option Closing)	Apr-Dec, 2015	07/01/2016
Alexander Luke	P&L (Option Closing)	Apr 2015-Mar, 2016	21/01/2016
Sonali Mody	P&L (Option Closing)	27/03/2015 to 24/12/2015	07/01/2016
Kamlesh Thokral Mody	P&L (Option Closing)	27/03/2015 to 24/12/2015	07/01/2016
Mitali Mody	P&L (Option Closing)	27/03/2015 to 24/12/2015	07/01/2016
Leena Mody	P&L (Option Closing)	27/03/2015 to 24/12/2015	07/01/2016

ABML has also provided the hard copies of SOAs provided to KTM Investors.

It may be noted that SOA does not indicate the profit and loss made by the clients. Further, it may be noted that these P&L statements signed by the investors were only specific to certain periods. These statements would not in any way negate those statements/instances mentioned in the above paragraphs. It was also alleged by the KTM Investors vide email dated 25/02/16 that Mr. Hemant Thukral had stated at every time of taking signature that investors need not worry, as every adjusted will be reversed and past profits will be paid. (Annexure B- Page 5 of File name Mody 2).

A.2.10. Further, it is noted that ABML Surveillance had sent emails dated May 02, 2015 to Mr.Kamlesh Mody that loss on derivative segment as on April, 30, 2015 is Rs.7.28 Lakhs and for Rangraj Investments is Rs.19.88 Lakhs. Mr.Kamlesh Mody replied vide email dated May 02, 2015 that they were surprised about the said loss, as they were

informed that profit for the said expiry is Rs.5.67 Lakhs and Rs.18.62 Lakhs respectively. Similarly, on June 05, 2015, ABML Surveillance had informed that loss to Kamlesh Mody HUF and Rangraj Investments Private Ltd account on June 04, 2015 is Rs.25.98 Lakhs and Rs.7.71 Lakhs respectively. Investors disagreed with the figure. Mr.Hemant Thukral vide email dated June 06, 2015 stated that "Already requested Surveillance to not to send mail, as they lead to confusion". Similarly, vide email dated December 22, 2015, it is stated that as on December 21, 2015, the loss is Rs.32.71 Lakhs. Mr.Hemant Thukral had sent an email dated December 22, 2015 stating that discussed with Surveillance and they will not send any P&L during contract and we will send final day PNL only with clear profit booked arms and M to M open/rolled over positions separately. (Annexure B Pages 32-45 of File name Mody 2).

This trail of communications indicates that whenever the actual expiry losses were brought to the notice of the client, Mr.Hemant Thukral replies to the investors that he will instruct Surveillance not to send such emails to avoid confusion. The above instances shows the attempt to mislead the clients, by hiding the actual position, so as to make them continue trading.

A.2.11. As mentioned in previous paragraphs (Annexure FI (8)), Mr.Hemant Thukral, sent various Estimated P&L and P&L tables to Mr. Alexander Luke (emails dated 03/12/2015, 12/04/2016, 13/04/2016, 09/05/2016, 10/05/2016, 11/05/2016, 12/05/2016, 16/05/2016,17/05/2016, 21/06/2016, 22/07/2016, 08/10/2016 and 10/10/2016, etc) for contracts having open positions. Certain figures are mentioned below the table. No explanation for such figures is given in the email.

Further, it is observed that vide emails dated April 06, 2016, April 05, 2016, May 29, 2016 and April 04, 2016, Hemant Thukral has forwarded Profit and Loss Statements to Mr.Alexander Luke for FY 2012-13, 2013-14, 2014-15 and April-July, 2015 respectively. The subject of the email stated "as seeked and advised by you". It is observed that as per P&L Statement mentioned in the said email for FY 2013-14, the Loss for Mr.Luke is - ₹29,35,925.84. However, as per Client Global Net Outstanding (Options Closing) Arbitrage Position) for FY 2013-14, the loss is -₹ 38,63,038.34. For the FY 2012-13 and 2014-15, the final figure of profit or loss is not mentioned in the email. Further, it is noted from the said P&L statements, certain figures were mentioned outside few rows. No explanation as to how these figures were arrived at or what they represent were not

mentioned in the email. It is also observed, vide emails sent in the year of 2016 (dated February 26, 2016 and April 19, 2016), Mr. Hemant Thukral indicated to Mr.Alexander Luke that Rolled over Losses were not considered for purpose of calculation of profit and loss.

ABML had stated as follows:

Such statements containing scenario analysis were sent only in the year 2016, much after the losses were suffered by Mr. Luke. The subject line clearly defines the activity "as advised and seeked by you" as the calculations were shared basis of the request of Mr. Luke on various possible scenarios. Mr. Hemant Thukral did not send any alternate statements to Mr. Luke. They were simply another copy of the original statements (containing additional column for scenario analysis). Mr. Thukral used to clarify queries of customers on research recommendations / positions / market movements. Predominantly sum of the profit and loss sustained by Mr. Luke on various contracts was displayed outside the profit and loss statement. In some months, Mr. Luke sustained losses on some of his transactions and he wanted to understand the scenario as to when he should have exited his positions vis-a-vis continuation of positions. Hence Mr. Thukral helped Mr. Luke with scenarios (like early closure of positions / non-extension of open positions etc.) which could have reduced losses to an extent.

ABML has provided certain call records and emails alleging that Mr. Luke has specifically acknowledged losses i.e .Call records of September 28, 2015, May 2, 2016 etc. and emails dated 02/05/2016, 02/06/2016 and 20/07/2016. In these call records and emails, it is observed that losses incurred on few contracts/months were discussed/disclosed.

ABML claimed these statements as “Scenarios”. However, in case of scenario analysis, at what scenario, a profit or loss will be realized/incurred has to be illustrated. However, in these statement, only an additional figure was included outside the table without any explanation.

ABML claimed that the statement with “Scenarios” were prepared at the request of Mr.Alexander Luke. Further, ABML had given the reason for sending statement that Mr. Luke wanted to understand the scenarios, as to when he should have exited his positions vis-a-vis continuation of positions and Mr. Thukral helped Mr. Luke with which could have reduced losses to an extent. However, the reason seems to be implausible, since all the transactions had already taken place and the profit/loss incurred. Further, as mentioned above, all the trading decisions were taken by ABML and only post trades, confirmation

was obtained from Mr. Luke. Hence, it would not have been possible for Luke to take any other positions, as the same is done by ABML for which consent was obtained later. Sending such estimated P&L statement with additional figures and profit and loss statements with scenarios and without explaining them, mislead the investor.

Further, as mentioned in Annexure FIII (5), there were indications made to Mr. Luke by ABML that his profits and dividends were invested in Liquid Bees (ETF) (Call recordings mentioned in the said Para). It is observed that various emails sent to Mr. Luke intimating the holdings of Liquid Bees in his account, wherein the quantity of holdings mentioned in such emails were higher than the actual quantity of Liquid Bees held by Mr.Luke on those dates (detailed in Annexure FIII (5)). These differences in the holding statements sent to Luke mislead the client regarding profits made.

ABML has been claiming that they have been sending statements as mandated by SEBI/Stock Exchange in all trading accounts - Mails pertaining to trade confirmations, SMS on Orders placed, Trades effected, on Margin shortfall, ageing debit clearance, Contract Notes, Margin statements, Statement of Accounts, Statement of securities, Profit and Loss statements, Demat statements pertaining to transactions / holdings and Payouts taken by complainant from time, was in receipt of various confirmations and that client had acknowledged / confirmed transactions effected in all trading accounts

ABML's submissions that they were sending statutory documents which gives true picture may be acceptable, if the clients were initiating the trades and no other misleading statements were provided. However, in these cases, as observed above, Profit and Loss Account sent by the team of Mr. Hemant Thukral/Wealth Management team do not reflect the actual position and has understated the losses. Further, it is pertinent to note that whenever losses were pointed out by the Surveillance Team of ABML and the client protested against the said figure. Mr. Hemant Thukral has sent emails to the clients stating that he will instruct Surveillance to not to send any emails. Further, in these cases, as stated above, all trading decisions were taken by ABML on behalf of the investors and investors were playing only a passive role.

Considering the same, it is the responsibility of ABML to inform the correct position to the investors, especially if they are sending any statement other than what is statutorily prescribed. However, in these cases, several reports/statements sent by ABML understated the losses and shown fictitious/overstated profits which prima-facie was to mislead the clients.

From all the above findings in Point A.1 and A2, it prima-facie appears that pay-outs were made to KTM Investors, claiming them to be profit pay-outs, when the investors were actually making losses. Further, various reports/statements were provided to the investors claiming to be profit and loss statements which were at variance with the actual positions and had understated losses and shown fictitious/overstated profits. These misleading positions/misstatements to the clients by ABML, prima-facie distorted the actual position. Thus, it appears that by concealing the material facts and by giving false statements, clients were made to trade in the strategy proposed by ABML and thereby they continue to earn brokerage and other charges.

These practices mentioned Point A.1 and A2, prima-facie, appears to be fraudulent practice as per Regulation 2 (1) (c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and are prima-facie in violation of Regulation 3 (a), 3 (c), 3 (d) and Regulation 4 (1), 4 (2) (f), 4 (2) (l), 4 (2) (m), 4 (2) (o) and 4 (2) (p) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. These are, prima-facie, further in violation of Regulation 4.6.1, 4.6.2 (2), 4.6.2 (3) and 4.4.4 of NSE (Futures & Options Segment) Trading Regulations read with Clause (A) (5) of Code of Conduct mentioned in Schedule II to SEBI (Stock Brokers and Sub-brokers) Regulations, 1992. Further, these practices are, prima-facie, in violation of Clause (A) (1), (A) (2), B (4) (b) of Code of Conduct mentioned in Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.

iii. Annexure FIV

Losses are covered by premium on sale of options and shown only at the later stages:

It was alleged by the KTM Investors that they have also noted that the premium generated from sale of options expiring in subsequent period was more than the cumulative loss in 12 out of 15 quarters. It is noted from the SOA that though on ongoing basis, F&O contracts were purchased, there was hardly any pay-in from these investors. With respect to the losses arising in the current expiry periods, the pay-in had to be made by these clients, for taking fresh positions or for setting off the debit in their account. However, in these cases, the total funds and securities brought in at the initial stages were used to manage, without seeking pay-ins, in case of debit balances. Whenever there are heavy losses reflected at the time of settlement thereby causing debit entries in the SOA or debit Balances, credit is made by selling option contracts, and profit pay

outs as promised were paid and fresh positions are taken on the basis of these credit entries. By selling these options, the losses arising out of the current expiry of the contract were hidden and postponed to the next expiry period. It is very pertinent to note that all these trades are broker driven and executed based on the decisions of Mr. Hemant Thukral and clients had played only a passive role.

a) For example, the SOA of Leena Mody for the period 24/12/2014 to 30/12/2014 is given in the table

Table I

Date	Narration	Dr.	Cr.	Balance
24-Dec-2014	To Bill N/d/1223/ 1021 For Ex: Nsef - Bt: Futures - Settlement=141223 Product : Oas	13,66,397.41	0.00	66,05,985.02
26-Dec-2014	By Bill N/d/1224/ 1021 For Ex: Nsef - Bt: Futures - Settlement=141224 Product : Oas	0.00	39,57,889.95	26,48,095.07
26-Dec-2014	By Bill N/d/1224/ 1021 For Ex: Nsef - Bt: Futures - Settlement=141224	0.00	12,000.00	26,36,095.07
29-Dec-2014	By Bill N/d/1226/ 879 For Ex: Nsef - Bt: Futures - Settlement=141226	0.00	550.00	26,35,545.07
29-Dec-2014	By Bill N/d/1226/ 879 For Ex: Nsef - Bt: Futures - Settlement=141226 Product : Oas	0.00	16,35,007.00	10,00,538.07
30-Dec-2014	By Bill N/d/1229/ 926 For Ex: Nsef - Bt: Futures - Settlement=141229 Product : Oas	0.00	20,01,040.67	-10,00,502.60
30-Dec-2014	Sett. Payout Abmoney	7,50,000.00	0.00	-2,50,502.60

It can be noted that as on December 24, 2014, Ms. Leena Mody has a debit Balance of around ₹ 66.06 Lakhs. On December 24, 2014, the following contracts were sold for expiry date 29/01/2015 in Leena Mody's account:

Table II

Date	OT	/ Price	Buy Qty	Buy Value	Sell Qty	Sell Value
24/12/2014	CO	6600			-1,000.00	-16,82,625.00
		6800			-12,000.00	-1,75,76,303.75
		7000			-3,000.00	-39,38,263.75
		8400	34,000.00	30,91,772.50	-2,000.00	-1,64,200.00
		8600			-32,000.00	-9,93,016.25
		8700			-16,000.00	-2,81,443.75
	PO	7900			-16,000.00	-5,55,063.75
26/12/2014	CO	8400	10,000.00	7,96,000.00	-10,000.00	-7,37,861.25
		8450			-5,000.00	-3,02,002.50
		8500			-5,000.00	-2,30,000.00

	PO	8000			-20,000.00	-11,64,683.75
29/12/2014	CO	8000	300.00	1,09,560.00	-3,500.00	-12,74,985.00
		8450	500.00	35,025.00		
	PO	8000	1,000.00	41,758.75		
		8600	300.00	86,550.00	-3,500.00	-10,01,050.00
30/12/2014	CO	8700	16,000.00	2,60,471.25		
	PO	7900			-8,000.00	-2,26,400.00
		8000			-8,000.00	-3,34,462.50

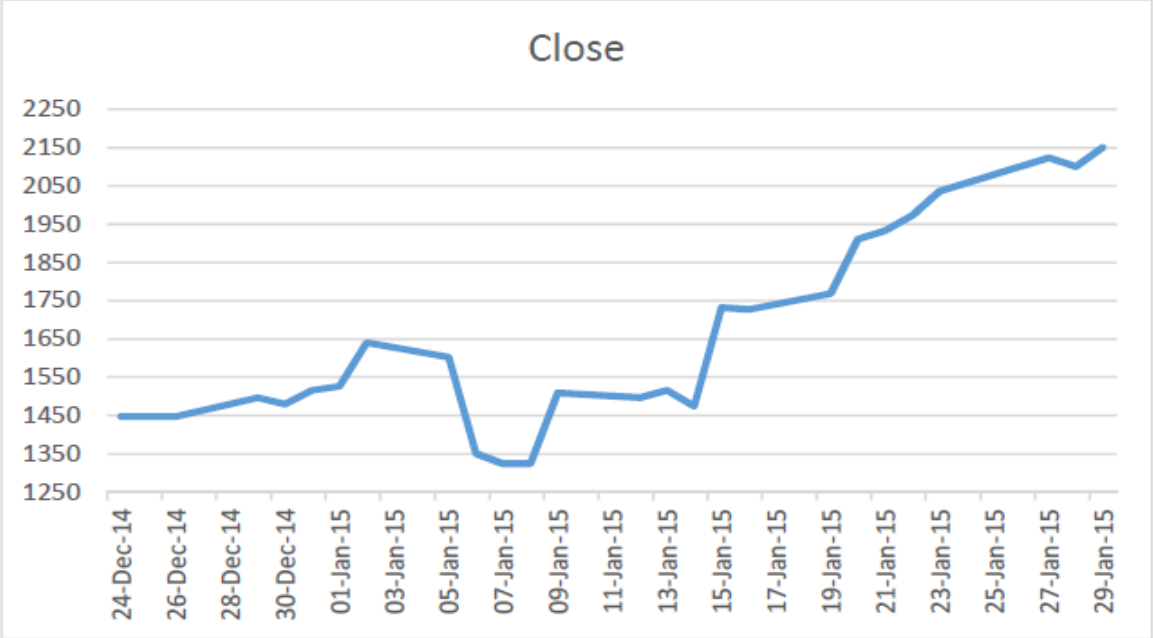
It is observed that by selling option contracts for the next expiry period, credit was created, contracts of previous expiry period (ending 24/12/2014) were squared off and a few buy positions were also taken. Further, it is noteworthy, that a "profit pay-out" of ₹7,50,000 was made on December 30, 2014 to the client.

Out of the said contracts, it is pertinent to mention that Call Option in the Strike Price of 6800 was sold and the Premium generated out of the same is around ₹1.76 crores. The transaction details in the said contract was given below:

Table III

Date	Expiry Dt	OT	/ Price	Buy Quantity	Buy Value	Sell Qty	Sell Value
24-12-14	29-01-15	CO	6800			-12,000.00	-1,75,76,303.75
29-01-15	29-01-15	CO	6800	12,000.00	2,50,55,666.25		

Based on details in NSE, price chart @ LTP day-wise for the said contract is displayed below:



Thus, it could be observed from Table XV, the entire open position in Ms. Leena Mody Account for Sold Call Option in Strike Price of 6800 for Expiry Period (29/01/2015) was squared off only on 29/01/2015 (at the end of the date of expiry, when the price was at the highest), after selling the Options for the next expiry period (i.e. 26/02/2015). No pay-ins were sought from the investor in between. The loss for Ms. Leena Mody with respect to this contract (for Call Option in Strike Price of 6800 in Expiry Period (29/01/2015) as per P&L is around rupees 74.79 lakhs. The total loss for Ms. Leena Mody for expiry period 29/01/2015 is around Rs. 1.53 Crores.

Further, as mentioned above, a Payout of ₹7.50 lakhs was made to Ms. Leena Mody on December 30, 2014, which was stated as Profit payout by Mr. Hemant Thukral, as mentioned in previous section of this report. This pay-out is not possible, without credit created out sale of Options mentioned above.

b) Further, the SOA for Leena Mody for the month of July-August, 2015 is given below:

Table IV

Date	Narration	Dr.	Cr.	Balance
27-Jul-15	By Bill N/d/0724/ 1100 For Ex: Nsef - Bt: Futures - Settlement=150724 Product : Oas	0	51,174.49	15,26,440.50

28-Jul-15	By Bill N/d/0727/ 1131 For Ex: Nsef - Bt: Futures - Settlement=150727 Product : Oas	0	3,75,395.99	11,51,044.51
29-Jul-15	Being Journal Entry For Dividend For Scrip Hdfc Ltd @ 13.00 Per Share For 2000 Shares Rd-dt: 16/07/2015	0	26,000.00	11,25,044.51
29-Jul-15	To Bill N/d/0728/ 1069 For Ex: Nsef - Bt: Futures - Settlement=150728 Product : Oas	16,79,881.12	0	28,04,925.63
30-Jul-15	By Bill N/d/0729/ 1065 For Ex: Nsef - Bt: Futures - Settlement=150729 Product : Oas	0	30,50,878.63	-2,45,953.00
31-Jul-15	By Bill N/d/0730/ 1078 For Ex: Nsef - Bt: Futures - Settlement=150730 Product : Oas	0	45,60,388.18	-48,06,341.18
31-Jul-15	Being Late Pay-in For F&o Exposure For The Period 16-jul-15 To 30-jul-15	1,12,205.39	0	-46,94,135.79
31-Jul-15	Being Delayed Payment Charges For The Period 21.07.15 To 30.07.15	6,774.36	0	-46,87,361.43
01-Aug-15	Being Prod Dr/cr Trf To Nrml	0	46,81,705.28	-93,69,066.71
01-Aug-15	Being Prod Dr/cr Trf To Nrml	46,81,705.28	0	-46,87,361.43
03-Aug-15	Dp Dr Trf To Brkg - 11995219	29	0	-46,87,332.43
03-Aug-15	Sett. Payout Abmoney	30,75,000.00	0	-16,12,332.43

It may be noted that on July 27, 2015, in the account of Ms. Leena Mody, there was a debit balance of around ₹ 15 Lakhs. Without seeking pay-in from the investors, between July 27-30, 2015, following contracts were bought and sold on behalf of Ms. Leena Mody by ABML for expiry period 27/08/2015:

Table V

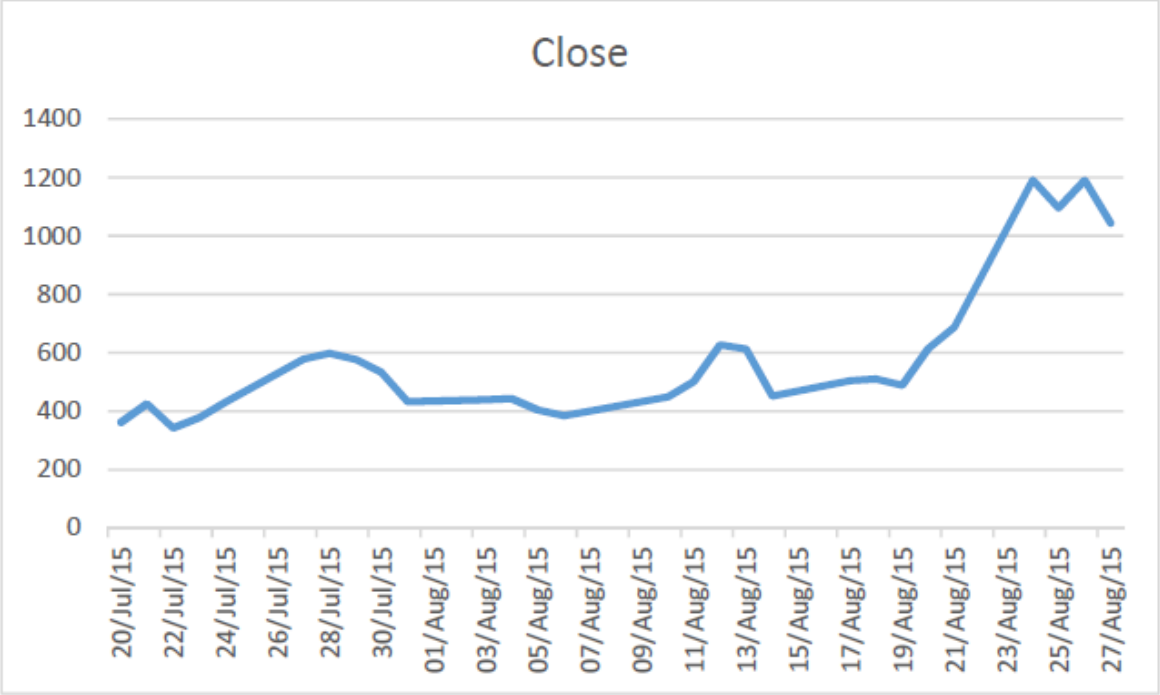
Date	OT	/ Price	Buy Qty	Buy Value	Sell Qty	Sell Value
27/07/2015	CO	8000			-17600	- - 88,56,898.75
	PO	9000			-17600	- 89,83,406.25
28/07/2015	CO	8000			-17400	- 76,24,271.25
	CO	8400	4500	7,28,248.75		
	CO	8700			-13500	- 5,74,982.50
	PO	8000			-4500	- 1,35,825.00
	PO	9000			-17400	- 1,00,18,196.25
29/07/2015	CO	8000			-3000	- 12,64,347.50
	PO	9000			-3000	- 17,89,196.25
30/07/2015	CO	8000			-7850	-

						37,42,022.25
	CO	8400	5200	9,33,085.50		
	CO	8700			-15600	-7,00,468.50
	CO	8900	29100	4,29,056.50		
	PO	8000	4500	1,09,475.00		
	PO	9000			-3000	-16,00,835.00
Grand Total			43300	21,99,865.75	-120450	-4,52,90,449.50

From the above table, it can be observed that by selling option contracts for the next expiry period, amount was credited, contracts of previous expiry period were squared off (value = ₹3,67,10,977.50) and a few buy positions were also taken. Further, it is noteworthy, that a "profit pay-out" of ₹30,75,000 was made on August 03, 2015.

Out of the said contracts, it is pertinent to mention that Put Option in the Strike Price of 9000 was sold and the Premium generated out of the same is around ₹2.24 crores.

Based on details in NSE, price chart for the said contract is displayed below:



The entire quantum (41,000 Quantities) of the said contract was squared off only on 27/08/2015, when the price was the highest. The loss to Ms. Leena Mody wrt this contract was ₹2.36 Crores and all the KTM Investors was around ₹ 3.60 Crores. After deducting the profits made in the expiry period, the total loss in the expiry period for the entire KTM Investors was ₹2.60 Crores. For the same expiry period, the loss for Mr. Alexander Luke was ₹ 51.85 Lakhs.

c) With respect to another client, Mr. Bhupatlal Jivanlal Sheth, it is observed that there were debit balances in his account on September 30, 2015. As in the above-mentioned instances, Options were sold, premiums were credited to show credit balance. Subsequently, payout was made for Rs.50,000 on October 07, 2015. Further, credit arising out of sale of options have enabled them to take fresh positions without insisting for pay-ins.

As mentioned above, it is observed from SOA (Annexure -G) that in the following instances, though there were not enough credit balances available in the accounts of the concerned clients, payouts (which are stated to be profit payouts, as mentioned in preceding paragraphs) were made to the clients through the premium realized by selling of options.

Table VI

Name of the Investor	**Date**	**Balance before payout as per SOA ("-" minus indicate credit balance)**	**Credit entry indicating net premium on sale of options after setting of buys and expenses**	**Balance after sale of Options ("-" minus indicate credit balance)**	**Payout stated as profit payout**	**Date of payout**
Kamlesh Mody	02-Jun-14	-2,55,780.63	8,45,173.52	-11,00,954.15	5,00,000.00	02-Jun-14
Kamlesh Mody	01-Aug-14	4,85,429.50	14,06,709.52	-9,21,280.02	4,68,000.00	01-Aug-14
Kamlesh Mody	09-Sep-14	18,03,962.10	25,03,419.05	-6,99,456.95	2,56,000.00	10-Sep-14
Kamlesh Mody HUF	03-Feb-15	18,77,536.46	23,79,939.90	-5,02,403.44	10,00,000.00	03-Feb-15
Mitali Mody	01-Aug-14	11,56,015.29	12,71,003.69	-1,14,988.40	3,88,000.00	01-Aug-14
Mitali Mody	10-Sep-14	12,43,872.37	21,27,743.23	-8,83,870.86	2,65,000.00	10-Sep-14
Mitali Mody	16-Mar-15	-1,58,544.81	32,25,727.16	-33,84,271.97	3,50,000.00	16-Mar-15
Rangraj Investments Pvt Ltd	01-Aug-14	-7,27,731.76	26,33,613.60	-33,61,345.36	21,50,000.00	01-Aug-14
Rangraj Investments Pvt Ltd	28-Aug-14	5,56,561.99	32,65,921.16	-27,09,359.17	18,25,000.00	01-Sep-14
Rangraj Investments Pvt Ltd	26-Sep-14	13,78,402.27	38,51,970.09	-24,73,567.82	16,45,000.00	30-Sep-14

Rangraj Investments Pvt Ltd	03-Nov-14	28,06,624.99	52,70,373.14	-24,63,748.15	23,68,000.00	03-Nov-14
Rangraj Investments Pvt Ltd	01-Dec-14	45,92,312.41	6946238.66	-23,53,926.25	13,20,000.00	02-Dec-14
Sonali Mody	01-Aug-14	-88,347.59	6,85,865.75	-7,74,213.34	4,12,000.00	01-Aug-14
Sonali Mody	09-Sep-14	10,99,766.10	19,62,440.16	-8,62,674.06	2,61,000.00	10-Sep-14

From the table above and the instances mentioned above, it can be observed that the payouts were not made out of profits generated in the last expiry period, but out of credit generated by selling of options for the next expiry period. By selling options for the next expiry period, credit was created in the accounts of the Clients, which had hidden the loss/debit incurred in previous expiry period and payouts were made stating to be profit payouts out of such premium.

Such sale of options had contributed to major losses in a few expiry periods, though a few of such contracts had resulted in profits. Few of the expiry date-wise major losses for KTM Investors and Mr. Luke are given below:

Table VII

KTM Investors		**Alexander Luke**	
Expiry date	**Apprx. Losses wrt contracts expiring in that expiry period**	**Expiry date**	**Losses wrt contracts expiring in that expiry period**
24-12-2014	-3,24,84,685.00	29-08-2013	-55,33,977.50
29-01-2015	-2,13,81,899.25	24-12-2014	-77,41,226.25
30-04-2015	-1,14,65,031.75	27-08-2015	-51,85,375.25
27-08-2015	-2,60,42,492.75	24-09-2015	-43,92,354.00
24-09-2015	-2,05,25,722.75	26-11-2015	-42,85,021.50

Overall, loss made by the KTM Investors for FY 2014-15 and 2015-16, as per summation of Profit and Loss Statement - Client Global Net Outstanding (Options Closing) Arbitrage Position (excluding Delayed and Late Pay-in charges) was around ₹ 4.15 crores and ₹ 5.70 crores respectively and for Mr.Luke was around ₹ 37.64 Lakhs and ₹1.95 crores respectively

As mentioned above, whenever there are debit balances in the client's ledger due to losses in the previous expiry period, ABML has not informed the clients about such losses, nor insisted for pay-ins from clients for subsequent positions. ABML had sold Options on behalf of the investors for the next expiry periods and credited

premium to the accounts of these investors. Out of such premium credited to their account, payouts were made stating to be profit payouts (as mentioned in emails and statement handed over by Mr. Hemant Thukral), although during those periods losses were incurred and further, additional positions were taken. It is also observed that what started as risk free option strategy or covered contract with minimum losses, soon lost its basic ingredients, i.e., covered position and became very open i.e. either long position is huge or vice versa which left the option contracts vulnerable for huge losses.

Admittedly, these clients gave securities as a collateral for their accounts, however when these accounts are making losses, the security offered acted as a buffer for margin payment and to set off the losses in the account. Once this buffer is withered away, the clients had no securities left to fall back on.

This strategy had resulted in hiding the losses from the investors (as the debit balances in their account were set off against the premium on options sold) or roll it over to next expiry period and made the investors continue to accept the recommendations of the ABML and allow ABML to continue trading on their behalf, which had only resulted in their Broker continuingly earning brokerage and revenue through Delayed Payment and Late pay-in charges. Thus, ABML had not exercised due skill, care and diligence by allowing this practice while dealing with the investors. This fraudulent and unfair strategy had resulted in heavy losses to the investors.

Thus, based on the above findings, it appears that ABML is in violation of Clauses (A) (1) and (A) (2) of Code of Conduct of Schedule II read with Regulation 9 SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 and Regulation 3 and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

iv. Annexure FV

Delayed pay- in and Late Pay-in charges levied by ABML

Apart from the brokerage, it is observed that ABML was charging Delayed payment charges wrt the Debit Balances of the clients @ 23% p.a. on weekly/fortnightly basis. It is also observed that for FY 2015-16, apart from delayed payment charges,

"Late Pay-in for F&O Exposure" charges were also charged for same periods. For example, in the account of Ms. Leena Mody for 201516:

Table I

Date	Description / Narration	Dr. Amount
14-Jul-15	Being Delayed Payment Charges For The Period 07.07.15 To 13.07.15	269.19
16-Jul-15	Being Late Pay-in For F&o Exposure For The Period 30-jun-15 To 15-jul-15	1,54,146.03
21-Jul-15	Being Delayed Payment Charges For The Period 14.07.15 To 20.07.15	1,773.22
31-Jul-15	Being Late Pay-in For F&o Exposure For The Period 16-jul-15 To 30-jul-15	1,12,205.39
31-Jul-15	Being Delayed Payment Charges For The Period 21.07.15 To 30.07.15	6,774.36
17-Aug-15	Being Late Pay-in For F&o Exposure For The Period 31-jul-15 To 14-aug-15	1,42,742.29
31-Aug-15	Being Late Pay-in For F&o Exposure For The Period 15-aug-15 To 30-aug-15	90,208.82
31-Aug-15	Being Delayed Payment Charges For The Period 25.08.15 To 30.08.15	25,881.57
08-Sep-15	Being Delayed Payment Charges For The Period 31.08.15 To 07.09.15	47,794.93
15-Sep-15	Being Delayed Payment Charges For The Period 08.09.15 To 14.09.15	46,037.36
16-Sep-15	Being Late Pay-in For F&o Exposure For The Period 31-aug-15 To 15-sep-15	1,04,424.26
22-Sep-15	Being Delayed Payment Charges For The Period 15.09.15 To 21.09.15	52,283.77
30-Sep-15	Being Late Pay-in For F&o Exposure For The Period 16-sep-15 To 29-sep-15	78,093.30
30-Sep-15	Being Delayed Payment Charges For The Period 22.09.15 To 29.09.15	75,367.83
06-Oct-15	Being Delayed Payment Charges For The Period 30.09.15 To 05.10.15	60,995.70
13-Oct-15	Being Delayed Payment Charges For The Period 06.10.2015 To 12.10.2015	38,777.66
16-Oct-15	Being Late Pay-in For F&o Exposure For The Period 30-sep-15 To 15-oct-15	91,704.24

It is also observed that the total of such charges levied for KTM Investors and Mr. Alexander Luke for FY 2014-16 were as follows:

Table II

Name of the Investor	FY 2014-15	FY 2015-16		FY 2016-17
	Delayed pay-in	Delayed pay-in	Late Pay-in (F&O Exposure)	Delayed pay-in
Kamlesh Thakorlal Mody	1,75,431.40	8,82,312.99	3,78,802.40	5,21,675.83
Kamlesh Thakorlal Mody Huf	28,019.30	3,67,957.13	1,79,585.47	2,13,702.18
Leena Kamlesh Mody	3,38,468.15	34,23,401.10	18,11,825.00	20,34,453.30
Mitali Kamlesh Mody	2,05,665.83	7,52,277.86	3,74,608.33	4,55,235.44
Rangraj Investments Pvt Ltd	5,12,716.18	33,13,475.51	6,53,225.61	9,37,209.60
Sonali Kamlesh Mody	1,42,861.95	5,09,768.90	2,18,619.11	2,77,997.25

Total for KTM Investors	14,03,162.81	92,49,193.49	36,16,665.92	44,40,273.60
Alexander Koipuram Luke	3,42,971.21	2,67,949.07	8,15,738.00	4,32,109.12 +Late pay-in 57,940.59

On Query to ABML regarding the nature of these charges, ABML has stated that following charges were levied to all customers wherever applicable:

1. Delayed Payment Charges / Late Payin Charges / LPI / Late Payment Charges (currently renamed as Interest)

2. Late Payin for F&O Exposure (currently renamed as Interest on Margin Obligation)

Delayed Payment Charges are calculated @ 23% on the overall debit balances in a customer's trading account ledger (statement of accounts). Late Payin for F&O Exposure is charged @23% on non-maintenance of cash to collateral ratio of 20:80 by the respective clients. It was stated by ABML that the said charges are charged as agreed by the clients. Client consent was received through Voluntary Clauses Agreement / Additional Rights and Obligations. It is also stated that some customers are charged Delayed Payment Charges and / or Late Payin for F&O Exposure at a reduced rate on the basis of various parameters including trading volumes, background etc.

On perusal of the “Voluntary Clauses’” Agreement, it is noticed that in “Breach/Default/Death/Insolvency” section it is stated that the Client is liable to pay, from the respective due dates of payments, interest at the rate of 24% p.a. on all the amounts due to the member. (Annexure -W)

It is observed that Late Pay-in for F&O Exposure was being charged suddenly during 2015-16. Though ABML claimed that Late Payin for F&O Exposure is charged @23% on the non-maintenance of cash to collateral ratio of 20:80 by the respective clients, they could not produce any document evidencing specific consent from the investors for charging the same, during the inspection. ABML has only stated that the clients consent was received through Voluntary Clauses Agreement / Additional Rights and Obligations. However, the charges in total i.e.

(Delayed pay-in plus late pay-in for F&O Exposure) were in excess of the rate of interest i.e., 24% p.a. on debit balances, which the customers agreed for.

It is observed from SOA (Annexure -G) that in the following instances, ABML has made payouts (which were stated to be profit payouts, as mentioned in preceding paragraphs) to the clients. Immediately, a few weeks after the same, delayed payment charges /Late Pay-in for F&O Exposure were charged. Even, NSE has charged penalty for Margin Shortfall in few cases.

Table III

Name of the Investor	Date of Payout	Payout stated as profit payout	Date when charges levied	Charges	Type of charges
Kamlesh Mody	02-Jun-14	5,00,000.00	16-Jun-14	146.35	Delayed pay-in
Kamlesh Mody	01-Aug-14	4,08,000.00	11-Aug-14	770.54	Delayed pay-in
Kamlesh Mody	30-Dec-14	7,00,000.00	31-Dec-14	16,897.57	Delayed pay-in
Kamlesh Mody	16-Mar-15	3,50,000.00	17-Mar-15	576.88	Delayed pay-in
Kamlesh Mody	23-Oct-15	5,10,000.00	31-Oct-15	22,530.34	Late Pay-in for F&O Exposure
Kamlesh Mody HUF	16-Mar-15	3,20,000.00	17-Mar-15	666.86	Delayed pay-in
Kamlesh Mody HUF	21-May-15	5,50,000.00	30-May-15	746.73	Late Pay-in for F&O Exposure
Kamlesh Mody HUF	03-Jun-15	7,50,000.00	16-Jun-15	13,099.75	Late Pay-in for F&O Exposure
Kamlesh Mody HUF	_	_	30-Jun-15	13,560.66	Late Pay-in for F&O Exposure
Kamlesh Mody HUF	03-Aug-15	4,18,000.00	17-Aug-15	10,616.26	Late Pay-in for F&O Exposure
Kamlesh Mody HUF	_	_	31-Aug-15	6,989.40	Late Pay-in for F&O Exposure
Kamlesh Mody HUF	_	_	31-Aug-15	993.15	Delayed pay-in
Leena Mody	02-Dec-14	8,90,000.00	05-Dec-14	8,063.57	NSE Penalty
Leena Mody	_	_	08-Dec-14	13,938.49	Delayed pay-in
Leena Mody	15-Jan-15	5,50,000.00	23-Jan-15	12,524.38	NSE Penalty
Leena Mody	03-Feb-15	5,00,000.00	04-Feb-15	8,314.69	NSE Penalty
Leena Mody	_	_	05-Feb-15	1,363.76	NSE Penalty
Leena Mody	21-May-15	32,00,000.00	30-May-15	45,367.05	Late Pay-in for F&O Exposure
Leena Mody	03-Jun-15	29,50,000.00	16-Jun-15	1,70,455.41	Late Pay-in for F&O Exposure
Leena Mody	23-Oct-15	11,05,000.00	31-Oct-15	99,068.86	Late Pay-in for F&O Exposure

Leena Mody	30-Nov-15	21,00,000.00	16-Dec-15	1,01,020.97	Late Pay-in for F&O Exposure
Mitali Mody	27-Jun-14	4,50,000.00	30-Jun-14	1,776.25	Delayed pay-in
Rangraj Investments Pvt Ltd	01-Aug-14	21,50,000.00	25-Aug-14	1,078.20	Delayed pay-in
Rangraj Investments Pvt Ltd	_	_	30-Aug-14	849.49	Delayed pay-in
Rangraj Investments Pvt Ltd	01-Sep-14	18,25,000.00	08-Sep-14	1,832.49	Delayed pay-in
Rangraj Investments Pvt Ltd	_	_	15-Sep-14	1,027.57	Delayed pay-in
Rangraj Investments Pvt Ltd	03-Nov-14	23,68,000.00	11-Nov-14	5,305.67	Delayed pay-in
Rangraj Investments Pvt Ltd	02-Dec-14	13,20,000.00	08-Dec-14	11,354.46	Delayed pay-in
Sonali Mody	10-Sep-14	2,61,000.00	15-Sep-14	862.12	Delayed pay-in
Sonali Mody	16-Mar-15	3,20,000.00	17-Mar-15	555.66	Delayed pay-in
Sonali Mody	05-Jun-15	1,45,000.00	16-Jun-15	14,851.74	Late Pay-in for F&O Exposure
Sonali Mody	30-Jun-15	3,50,000.00	16-Jul-15	13,768.66	Late Pay-in for F&O Exposure
Sonali Mody	03-Aug-15	3,67,000.00	17-Aug-15	15,947.90	Late Pay-in for F&O Exposure

The above analysis shows that, on one hand, ABML makes pay-out (mostly on monthly basis) which are stated to be profit payouts in emails (when there was no actual profits) and on the other, within a few days, ABML charges the clients Delayed pay-in charges and Late pay-in for further exposure for the clients. Somedays such pay-outs have resulted in NSE charging penalty for Shortfall in Margins.

All the decisions regarding this scheme of things were taken by ABML - the decision to make such payouts and not to retain the same (may be to meet out the promised profits to the clients), decision to take positions on behalf of the clients (each of the transactions were initiated by ABML, for which clients consent was obtained post trades), without seeking additional pay-ins from the clients and the decision to charge Delayed pay-in and Late pay-in for F&O Exposure to the clients. ABML has gained substantial sums as mentioned above in the form of these charges, whereas their clients were making losses.

Further as mentioned above, by initiating trades on behalf of the client continuously without obtaining their prior consent, the stock broker has earned substantial sum as brokerage and other charges namely, Delayed payments and Late Payment

Charges. The total brokerage and Delayed (payment/payin) and Late Charges charged from the said clients' Financial Year wise are as follows (Annexure-L)

Table IV

	Delayed Payment and Late Pay-in charges		Total Brokerage Charge	
FY	Aggregate for KTM Investors	Mr.Luke	Aggregate for KTM Investors	Mr.Luke
2014-15	14,03,162.81	3,42,971.21	1,09,86,027.00	41,38,607.00
2015-16	1,28,65,859.41	10,83,687.07	49,09,311.00	12,77,514.80
2016-17	44,40,273.60	4,90,049.71	1,39,037.70	3,33,466.62

From the above findings, it is observed that ABML has executed the transactions on behalf of the clients, by encouraging them to deal in securities, with the object of enhancing their brokerage and other charges, which is in violations of Regulation 4 (2) (o) of SEBI (Prevention of Fraudulent and Unfair Trade Practices) Regulations, 2003

It is alleged by the KTM Investors that despite repeated assurances from ABML representatives vide emails, that delayed payment charges and margin shortfalls would be reversed no such reversals were made in the ledger accounts of the KTM investors.

ABML stated that the allegations, that Company employees agreed to resolve the problems pertaining to reversal of delayed payment charges, margin shortfalls, immediate payment of dividends accrued on shares and reversal of wrongful debit entries, are against the facts and are denied.

It is observed that, vide email dated 02/01/2015, Mr. Hemant Thukral replied to Mr. Kamlesh Mody that 'we will make a note of all this penalty and delayed payment charges, and get it reversed' and further vide another email dated 06/02/2015, Mr. Hemant Thukral instructs his subordinate Mr. Vishal Muni (with a copy to Mr. Kamlesh Mody) to make a list of all delayed payment charges, in all accounts of KTM Investors and states that it be will reversed within one week. However, it is found that no such charges were reversed. (Annexure D – Email XIII)

Thus, based on the above findings, it appears that ABML is in violation of Clause (B) (4) (a) and (b) of Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 and Regulation 4 (2) (l) and (o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

v. Annexure FVI

A. Lack of adequate systems and internal controls:

As can be seen from the findings above, Mr. Hemant Thukral, Head of Technical Research and Derivatives of ABML, played a major role in the entire scheme of things, be it approaching the clients having high value shares, advising them to join the scheme whereby shares of the clients were given as collateral, providing recommendations regarding trades or managing their accounts on their behalf. He along with his team was providing statements, other than what is statutorily required to be provided by the Broker and such other statements which were misleading and not providing the actual position to the clients. He was instructing release of payouts to the clients, which are stated to be profit pay-outs, wherein the clients were actually incurring losses at that time.

IGRP of NSE in their hearing dated October 18, 2016 in the matter of Complaint of Mr. Alexander Luke inter-alia stated as follows:

It is still a puzzle as to why a senior officer like Mr. Thukral was running a parallel reporting mechanism sending alternative profit statements to the complainant with special markings of profit figures in an extended column. The claim, of the TM alleging that such irregular reports (i.e "scenarios" as termed by the TM) are churned only at the behest of the complainant- and with details given by the complainant doesn't hold organizations like ABML in good stead in the eyes of the public.

Further, it is observed that in some of the contracts, whole or substantial open interest positions were held by these clients, due to the trades executed by ABML on behalf of these clients. For example, for the Client- Rangraj Investments Private Limited, Put Option for Infosys Stock for exercise date 24/12/2014 was Sold for the said client in Strike Price of 2350 (Quantity–58000 Quantities). It was observed from NSE website, the open position for the said contracts as on December

02,2014 was 61,000 and the positions taken on behalf of Rangraj Investments Private Limited, was around 95% of the total outstanding positions in the market. The net loss wrt said contract was around (-Rs.1,10,26,772.50). Similarly, in the same expiry date, Put Option for Infosys Stock sold in Strike Price of 2400. The entire market open position for the said contract (32,250 Qty) on 02/12/2014 was taken on behalf of Rangraj Investments Private Limited. The net loss in his account wrt said contract was (-Rs.56,23,945.00). It is reiterated all the trading decisions for these clients were taken by Mr. Hemant Thukral and his team.

It is further observed that Mr. Hemant Thukral has also traded in Options segment through ABML during the said periods. Information regarding internal policy of ABML regarding trading of their employees were sought. ABML has only provided policy with respect to dealing in the scrips of ABML which happens to be a listed company. On analysis of trading patterns of Mr. Hemant Thukral viz-a-viz the trading positions taken on behalf of the clients of ABML, it is observed that for the same expiry date, positions were taken for clients on introduction of new contracts whereas Mr. Hemant Thukral's positions were taken on dates closer to the expiry period. Further, it appears that while trading in his account, Mr. Hemant Thukral made conservative decisions, whereas for trading in clients account, he took positions of deep in the money and deep out of the money in Option Contracts, which had resulted in huge losses to the clients, as mentioned in the previous paragraphs. Comparison of trades of Mr. Hemant Thukral with Luke and KTM Investors and profits/loss in such transactions for the expiry periods (24-12-2014,29-01-2015,30-04-2015,27-08-2015 and 24-09-2015) in which KTM Investors and Mr. Luke had incurred huge losses are given in Annexure X.

On inquiry regarding the compensation structure of Mr. Hemant Thukral, ABML has stated that Mr. Hemant Thukral was paid fixed compensation in the form of salary and variable pay on the basis of strike rate of positive recommendation of the calls given by him. It may be noted that, as mentioned in above findings, the trades were executed for the clients on the basis of instructions/recommendations of the Mr. Hemant Thukral. Thus, there is a conflict of interest wherein Hemant Thukral is making recommendations and causing to execute trades on behalf of clients, without taking into account the interest of the clients and subordinating the client's interest for his own.

The above-mentioned findings may be the reason for Mr. Hemant Thukral to hide the losses from the clients by sending misleading and incorrect statements so that they continue to trade and thus, while he and ABML continues to be benefited, the clients were left with huge losses.

B. It is to be noted that aforesaid happenings are not a one-off event by ABML, but are of repetitions. Summary of action taken by SEBI in previous instance and IGRP Proceedings against ABML alleging similar violations are listed below:

i. SEBI inspection of ABML and order for violations in Option Maxima Strategy:

It was found during the earlier SEBI Inspection that during the year 2010-11, ABML had operated Options Maxima Strategy in which Short Strangle (also known as Sell Strangle), was recommended to the clients. This particular option strategy was marketed at as "limited profit – unlimited risk" strategy that is taken, when the option trader thinks that the underlying security will experience little volatility in the near term. It was observed that 640 clients had availed this strategy. During the month of September 2010, Client's positions in the strategy showed a high amount of Mark to Market losses due to unidirectional and rapid upward movement of the NIFTY index. This resulted had in losses to the tune of Rs.103.24 crores. It was also observed that ABML had compensated the clients for the said loss.

On analysis of the terms and conditions of Options Maxima Strategy, it was found that ABML had managed a discretionary account for and on behalf of clients who are registered in "Option Maxima" strategy and had rendered the portfolio management services to their clients in violation of Section 12 of the SEBI Act read with clauses A (3) and A (5) of Code of Conduct for brokers specified in Schedule II read with Regulation 9 of the Brokers Regulations. In the said case, Adjudication was initiated by SEBI and Adjudicating officer of SEBI had levied monetary penalty of ₹10,00,000/-vide order dated November 23, 2017.

ii. IGRP Proceedings of Alvittas Electricals Pvt Ltd:

It was observed that in the IGRP Proceedings, the said entity (Alvittas) alleged the following : They have opened the account with ABML only for arbitrage trading for the cash to future, reverse cash and box arbitrage in options. However, it had found that many naked positions were taken by ABML, ABML had concealed huge

losses, positions were taken without any corresponding protective buying of call and put options. The said trades were done without adhering to their instructions and hence, not authorized. Hence, it had incurred loss of Rs.104 lakhs. ABML denied all the charges. NSE IGRP vide its Order dated April 27, 2015 observed that after long negotiations, both parties agreed and arrived at a settlement sum of Rs.50 Lakhs to be paid by ABML to Alvittas.

iii. Arbitration proceedings of ESPL Systems Private Limited:

The applicant had alleged the following: Hemant Thukral and other person had visited him and stated that they will investment in option called, 'strategy in Future' and would generate a return of 12%-15%. Hemant Thukral also stated that the applicant can give some shares of good companies as collateral and that the applicant (ESPL) need not make any decision and the respondent (ABML) will take the call. The claimant required to confirm those calls to call center who call the claimant for confirmation. The applicant was assured monthly statement of account. The applicant gave cheque for Rs. 12 lakh and transferred 2000 reliance shares to the respondent demat account. Everything was going fine for some time and one day he received a sms stating that Rs.4,00,000 as loss and this loss increased to Rs. 8 lakh in May 03, 2012. Thukral stated that losses were on account of errors by his department in doing trades in Delhi.

ABML denied all the allegation and stated that it had sent SoA, contract notes to the applicant and had played some audio conversation between the applicant and the dealer. The arbitrator had asked how the order was placed and ABML could not submit any proof for the same. Hence, Arbitrator stated that since it could not produce any evidence for the order placement by the applicant and showed only selected conversation, the orders were not being placed by the claimant and allowed claim of 50%. Further, Arbitrator Ordered that the claim amount admitted was Rs. 4,02,286.50 and interest, @10%p.a on the said amount from the date dispute filed with NSE till final payment, shall be made.

iv. Arbitration proceedings of Ms. Vaz:

The applicant had alleged the following: In October 2013, employees of ABML approached and assured her (oral assurance) of generating 18%to 20% p.a return on her existing holding of shares in demat account without affecting her holding. During Feb/march 2014 she came to know of huge losses in her account and

wanted to quit. However, Hemant Thukral, informed her that he was fine tuning the strategy so that things would turn around and losses were due to errors of Bangalore Branch and that her account was transferred to Mumbai under the direct supervision of Hemanth Thukral. But losses continued. On October 20, 2014, Thukral assured her that no brokerage will be charged till the losses were recouped. But the applicant stopped trading. She claimed that her loss was Rs. 57,35,414 from ABML for trading in F&O segment between 09/01/2014 to 20/10/2014. But ABML denied all the allegation and stated that the client was sent SMS, SOA, Contract Note, Debit Balances in her account etc. Arbitrators did not admit the claim of the applicant, since she could not produce any evidence for her claims and also she had taken a pay out of Rs. 9,90,000/- on May 23, 2014. The arbitral panel had dismissed her claim.

From all the above, it is evident that there had been repeated violations/complaints against ABML on similar lines and ABML does not seem to have improved their systems and controls since then and continued with such practice.

Thus, by not having adequate systems and internal controls to ensure due skill, care and diligence in conduct of all its business and in dealing with their clients, ABML has violated Clause (A) (1) and (A) (2) of Code of Conduct mentioned in Schedule II read with Regulation 9 SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.

9. Vide email dated September 14, 2020, Noticee requested for extension of time till November 15, 2020 to submit its reply to the Supplementary SCN. Vide email dated September 18, 2020, the Noticee was granted time till September 30, 2020 to submit its reply. Thereafter, vide letter dated September 30, 2020, the Noticee submitted its reply to the Supplementary SCN, and the main submissions made therein are as follows –

    1. *This is in reference to the captioned Supplementary SCN dated August 25. 2020 ("Sup. SCN") received by us on August 31. 2020 vide which we have been advised to file our submissions (if any) to certain additional material relevant to the adjudication proceedings which has been introduced for the first time vide the Sup. SCN, which has been stated to have been inadvertently left out in dispatch post submission of replies to the original Show Cause Notice, post final hearing as well as submission of written arguments thereof.*

2. *At the very outset, we state that the Sup. SCN that has now been issued is unclear and ambiguous. The charges that have been levelled against us and which we are required to respond are set out in the SCN. Vide the Sup. SCN. we have now been advised to file our reply to the additional material provided, without providing any clarity on the charge that is required to be responded. Other than broadly categorizing the additional material within the umbrella of the charges mentioned in the SCN. the Sup. SCN fails to clearly set out the relevance of the additional material provided vis-a-vis the charges framed under the SCN. In light of the same, it is submitted that the Sup. SCN is rendered incoherent; has been issued in dereliction of principles of natural justice; and deserves to be set aside.*

3. *It is submitted that from a perusal of the additional material, as provided vide the Sup. SCN, it appears that the same are contents of the inspection report prepared by SEBI in the instant matter, provided to us prior to initiation of the adjudication proceedings vide letter dated September 25, 2019. It is submitted that we have already made submissions in respect of the additional material* {i.e. the inspection report and its annexures) *that relate to the charges set out in the SCN, vide our letters dated July 05. 2020 and July 25, 2020. Accordingly, the content of our replies dated July 05, 2020 and July 25. 2020 should be read as part of this reply and is not being repeated herein for the sake of brevity. In this regard, for ease of reference, your attention is drawn to the table set out below:*

Annexure	*Relevant to serial no. of **SCN***	*Our reply dated July 05, 2020*
FI	*4A*	*Paragraphs I to 34*
FII	*4C*	*Paragraphs 43 to 58*
FIV	*4D*	*Paragraphs 59 to 67*
FV	*4E*	*Paragraphs 68 to 72*
FVI	*4B*	*Paragraphs 35 to 42*

4. *Without prejudice to what has been stated hereinabove, it is submitted that Annexures to the Sup. SCN should be relied upon to the extent of charge made out in the SCN and the rest of the content of the Annexures ought not be commented upon as it has no reference to any charge in the SCN. Our response to the relevant sections of Supp. SCN is annexed herewith this letter and marked as* "RESPONSE TO SUPPLEMENTARY SCN".

5. *It may be noted that we have only responded to sections of the Annexures that are relevant to the content of the SCN and the sections which are not covered under the SCN is not replied to. We reserve our right to file a more detailed reply, if required.* ***Further, we request that an opportunity of personal hearing be granted to us to explain our position in the said matter.***

RESPONSE TO SUPPLEMENTARY SCN

Annexure FII

A. Misleading the clients by understating losses and overstating profits

A.1 Profit Pay-outs:

The text under clause A.1 is merely a record of requirements and does not warrant any reply.

Response to Clause A1.1:

1. *Issuance of pay-out is not related to generation of profits or otherwise. Payments can be made to clients as and when demanded and possible. These can be for various reasons inter alia including sale of securities in their account (whether at profits or losses), payment against credit balance in the account for various reasons including MTM credits, sale credit of option, release of margins, dividend credits etc. In case of KTM investors also the payments were made for several of the above reasons and not only against profits. None of the payments have ever been correlated to profits as wrongly alleged in the letter of SEBI. Further the email of Mr. Hemant Thukral dated October 12, 2015 only suggests that the payouts regarding option sale contracts will be released on 20th. It may be appreciated that the mail does not mention that these were profit payouts. We deny having stated that we have issued pay-outs even when they were not eligible, post taking approvals. All the payouts are made within the framework. Further admittedly, KTM investors too are aware and have accepted that payouts had no specific periodicity or correlation with profit and loss statements. We deny them being profit payouts as wrongly alleged. Further KTM Investors was explained in detail as to how the pay-outs are released and what approvals are required. Two email dated June 29, 2015 and June 30, 2015 (internal email of ABML) were explained in personal meeting to KTM Investors and physically acknowledged by KTM investors was obtained thereon, copies of which are annexed as* ***Annexure*** *1. Even further Mr. Kamlesh Mody is also aware and accepts that he understood the payment process and also records that pay-outs can be for option selling or profits. Content of this email is reproduced below:*

2. *Mail sent by Mr. Kamlesh Mody to Mr. Hemant Thukral on 01/09/2015:*
   "As discussed with you on various occasions that we were promised pay out end of every expiry if ledger in credit due to Option Selling or Profits.
   We have received Profit and Loss and Statement of accounts till date and understand the process of pay out as discussed with you length in month of June.
   However I will be needing payments
   So can we talk?"

   From the above conversation from KTM to ABML team it is evident that credit could have come from Option Selling as well as Profits and therefore the apprehension of SEBI based on the complaint of KTM investors that Credits were shown to conceal losses and payments were made in the name of profits is unfound. Copy of the email dt. 01.09.2020 is attached herewith as Annexure 2.

We would like to further submit that the 3 Independent, Highly Learned and Experienced IGRP members post perusing voluminous documentary evidence and extensive oral hearings for 2 days have given the following finding:
"Based on the documents submitted and interactions during this meeting, it is observed that the complainant was well aware about the happenings in the complainant's accounts".

This would clearly go to prove that KTM investors have been aware of their losses in their accounts and it can never be claimed that "profit payouts" were effected to them.

Response to Clause A.1.2:

3. *As stated above, several types of pay-outs were effected. On many occasions, KTM investors were seeking payouts of dividends as well as option credits as stated in their mails, contents of which has been extracted above. With regards to settlement of accounts, it is submitted that SEBI and Exchanges have put in place elaborate guidelines for settlement and as per circular no. MIRSD/SE/Cir-19/2009 dated 03.12.2009, Circular No. NSE/INSP/21651 dt. 07.09.2012 and Circular No. NSE/INSP/24849 dt. 29.10.2013 a multiplier of 225% is to be applied on margin. Therefore, all settlements were carried out as per the guidelines of SEBI and Exchange and no fault can be found with the same. However normal payouts can be and are required to be done even if 100% margins are maintained. As such the co-relation of quarterly settlement payout with normal payout mechanism is unwarranted. Even further settlements are carried out closer to month end and the KTM investors have a general trend of requesting payment during the first week of few months and therefore settlement and payment are close to one another and no adverse inference can be drawn from the proximity of these two dates. In fact, it goes on to substantiate that when KTM investors requested for pay-out we promptly made payments and no fault can be found with such payments.*

4. *For eg. on 29/05/2014 Kamlesh Mody had an open position on which a SPAN margin of Rs.26,75,899.99 was applicable. We had run the settlement on that day and as per the permitted calculation, we could have retained margins to the tune of Rs.60,20,775/- (225% of 26,75,899.99) The value of collaterals (post haircut) was Rs.1,01,84,347.34. Trading account was in a debit of Rs.70,53,304.48. So the effective balance of Mr. Kamlesh Mody was Rs.31,31,042.82 (1,01,84,347.34 - 70,53,304.48). Since the retainable amount (Rs.60,20,775) was more than actually retained amount (Rs.31,31,042.82) no payment or release of securities was required to be done as per the guidelines of SEBI and Exchanges and therefore no fault can be found with the settlement done by us. Margin statement as on 29/05/2015 is filed herewith as* ***Annexure 3*****.**
5. *However, in normal course, margin requirement of 225% would not be taken into account. Even if 110% margin is available, payouts would be effected. Hence a sum of Rs. 5 lakhs out of the total available credit balance of Rs.11.01 lakhs in his trading account was effected to Mr. Kamlesh Mody on 02/06/2015. Even after effecting payout of the said Rs. 5 lakhs, the total margin available to the credit of Mr. Mody was Rs.1,10,96,910.65 (Securities margins of Rs.1,04,95,956.50 + Cash margin of Rs.6,00,954.15). The total SPAN margin required to be maintained was Rs.81,89,350/- and as such payout was made on 02/06/2020. Margin statement as on 02/06/2015 is filed herewith as* ***Annexure 4****.*

6. *The above example would clearly go to prove that settlement calculations and pay-out pursuant thereto under the guidelines of SEBI is non-comparable with normal payouts made at the request of KTM investors. Similar details pertaining to KTM investors are given in Annexure 5. (To be prepared) The aforesaid submission substantiates that co-relation to SEBI payouts and normal payouts are incorrect and not maintainable.*

Response to Clause A.I.3:

7. *The payouts can be released for various reasons as aforesaid. These may at times be issued even if there is a debit balance. KTM investors had not withdrawn full value of possible pay¬outs in their account. Instance wise reasons for pay-out released are given hereunder:*

    a. *Ms. Mitali Mody had sold securities worth Rs.4.42 lakhs on 31/07/2014 and the payout of the same came on 04/08/2014. However, as Ms. Mitali Mody had requested for a payout, a sum of Rs. 3.88 lakhs was paid out on 01/08/2014. The other payout of Rs. 0.65 lakhs was dividend payout as indicated in the table. Copy of the relevant portion of the statement of accounts of Ms. Mitali Mody is attached herewith as* ***Annexure 6.***
    b. *The payout of Rs. 5.45 lakhs made to M/s. Rangaraj Investment Pvt. Ltd on 26/06/2015 was a dividend payout which was received on 24/06/2015 as indicated in the table. Copy of the relevant portion of the statement of accounts of M/s. Rangaraj Investment Pvt. Ltd is attached herewith as* ***Annexure 7****.*
    c. *Ms. Leena Mody had received credit worth Rs. 11.97 lakhs for her transactions executed on 19/06/2015 which was posted in her ledger on 22/06/2015. The money was to be received from the Exchange and therefore there was no credit risk involved. Since Ms. Leena Mody requested for a pay-out of Rs. 0.96 lakhs on 19/06/2015 the same was accepted. Statement of accounts of Ms. Leena Mody is filed herewith as* ***Annexure 8.***

    The reply is restricted to investors mentioned in Serial No. 4C in the SCN

Response to Clause A1.4:

8. *At the outset it is submitted that requests for pay-out may be written or oral and it is not mandatory to maintain a record of pay-out requests. It is only to be ensured that pay-outs are given to respective parties only and not to 3rd parties which has been diligently done.*
9. *There are abundant communications which are overlooked, wherein KTM investors have been seeking payouts of premium on sale of options. Attention is drawn to communications (letter/ mails) dt. 23.03.2015, 27.03.2015, 28.03.2015, 03.04.2015, 29.06.2015, 01.09.2015. The same are filed are filed herewith as* ***Annexure*** *9* ***(Colly).***
10. *Further with regards to the email and the annexed sheets thereto it is submitted that the subject line is "Profits & Pay-out" and not "Profit Pay-out". The excel sheets also record payments and profits in different rows and nowhere it is mentioned that the pay-outs were in exact co-relation to the profits.*

11. *Even KTM investors vide their mail and letter communications have clarified that contents of excel sheets are calculations based on method suggested by them. They have also clarified that actual profit and loss statements would be shared post April 2015 - which actually was done and KTM investors have also acknowledged the same. The duly acknowledged profit and loss statements of KTM investors for FY 2014 - 2015 were filed as part of* ***Annexure 10 (Colly)*****.**

Response to Clause A.1.5:

12. *With regards to the emails it is submitted that the calculation details provided in both mails (Annexure D - II & III) as well as Hard Copy of Profit Arm Document (Annexure J) were as per the methodology suggested by KTM investors, which is clearly indicated in various documents / mails exchanged by KTM investors. The relevant extract is reproduced hereunder:*

Extract of letter dated 23 March 2015

Points discussed

1) ABML sheets send in March 2015 are calculations and not Profit and Loss figures, please do not put entries in TALLY for tax calculation purpose as communicated final Profit and Loss will be send post march expiry around April first week as capital gain statement issued for income tax purpose.

2) Payout figures given in sheet match with bank statements and update in Tally, comment column mention Option Premium and Profit pay out.

3) Ask for separate holding statement for Rajani K Shah dividend to be uploaded in Tally separately and matched with respective holdings.

4) Stocks sold in family accounts please upload in Tally for Long Term Capital Gain working.

Extract of mail dt. 27 March 2015:

"Hemant Bhai/ purvesh

Points discussed at meeting

1) *Excel sheet s send in DEC 2014 and March 2015 are calculations as per ledger method suggested by us.*

2) *Actual Profit and Loss will be send post expiry April first week with heading 'Capital Gain Statement' to be used for tax purpose.*

3) *Rajani K Shah securities statement to be sent separately for dividend purpose.*

4) *Physical Contract notes of stock sold in month of march to be given.*

5) *Pay Out would be done at end of every expiry if ledger in credit due to profit/option credit selling.*

6) ***Going forward only ATM Options loss/profit to be calculated.*** *Deep in Money Options which sold merely for credit generation would not be considered.*

We should meet frequently so that we can have a meaningful discussion for way forward with proper plan to recover losses. Off late with losses increasing our meetings are getting postponed quite frequently.

Regards

Kamlesh"

The same contents are again reiterated by KTM investors vide their letter dt. 28 March 2015

Important Points clarified Hemant and Purvesh

1) Sheets received in March 2015, PNL showing variation as they are calculations as per ledger and M to M of open positions and do not put them in final PNL Tally yet.

3) Final PNL will be given once position is closed.

4) In Sheets Pay out figures much higher than Profits, as explained Credit due to Option selling.

5) For calculation of profit and loss no deep in money in option rolled will be considered, as they are merely for credit generation.

The same is again reiterated vide KTM investors mail dt. 03 April 2015, extracts of which are made hereunder:

"Dear Hemantbhai,

1. Vishal has not come. Yesterday Ketanbhai was very much in the office. In fact, he waited for him.

2. Entries pertaining to 5th March 2014, 10th March and 19th March Calculations need to be embarked and detail working to provide for method of calculation, if ledger method used as recommended by me even then how were those figures reached.

3. Balance Payment of DEC. 2014 Rangraj and Leena - it was promised to be paid later on as ledger were in Debit due to huge losses faced in Dec-Jan 14-15, now when ledgers are in credit due to option premium please take requisite approval and get pay out done.

4. New Format of report making already discussed start sending excel. Just for revision new format only ATM positions needs to be considered ignore the deep in money as used merely for credit generation.

5. Holding statement required separately for Rajani K Shah

From our side we have to give you the payment of Laxmi Vilas bank for 167 shares

I have asked Ketan to discuss with you pending issues so that replies can be recorded with time lines.

Regards

Kamlesh"

Further by letter dt. 03 April 2015 Mr. Ketan - an employee of KTM investors is recording the replies to certain queries raised by KTM investors. Extract of the same is given hereunder:

"Hemant Thukral/Ketan

Pending issues

Dear Hemantbhai,

1. Vishal has not come. Yesterday Ketanbhai was very much in office. In fact, he waited for him.
Vishal will come on 5th

2. Entries pertaining to 5th march 2104, 10th March and 19th March excel need to be earmarked and detail working provided for method of calculation, how were those figures reached.

Calculation as per ledger method given oy us, open position M-M

3. Balance payment of Dec 2014 Rangraj and Leena - It was promised to be paid later on as ledger had debit due to loss.

Discussed with Hemant Bhai, credit because of option selling, payout approval required.

4.New report format already discussed start sending the excel in new format by what time. New format only ATM positions considered. So no excel to be sent.

5. Holding statement required for Rajani K Shah
Manually prepared holding statements will be send

From our side we have to give you payment of Laxmi Vilas bank for 167 shares.

Ketan discuss with Hemant Bhai and give me reply on above points with time lines of pending works.

Copies of the letters and mails are filed herewith as part of ***Annexure 9.***

13. *The above documents / mails would clearly go to show that the calculation methodology was shared by KTM investors and payouts reflected thereunder were never considered as profit payouts. KTM investors were very clear in their approach to profits and losses in their accounts. The above documents / mails would go to prove that they were taking payouts of Options Premium Credits and did not consider the same as profit payouts and did not want their employee / accountant to enter the same into Tally for the purpose of calculating profits and losses for tax purpose. The above documents / mails further establish that Deep in the Money or Deep Out of the Money options were excluded in the reports as desired by KTM investors.*
14. *Moreover, KTM investors have been served with actual profit and loss statements as stated in the above documents / mails at periodic intervals. KTM investors have also acknowledged profit and loss statements periodically and the same was also filed along with our earlier replies. KTM Investors were extremely vigilant and maintained a complete record of P&L statements sent by our surveillance department and the P&L statements prepared as per the method of KTM Investors. Our team members were also called upon to personally meet and explain the difference and after having satisfied with the reasons for difference, KTM Investors accepted and acknowledged having understood the reasons thereof. Copies of few such statements and Profit Arm Documents are annexed as Annexure 11 (Colly)*
15. *It is also submitted that the mail dt. 29.06.2015 filed as part of Annexure 1 hereinabove also goes to prove the above submissions as KTM investors is seen reiterating that "It was promised to me that post every expiry payout of booked profit arm or option selling premium if credit in ledger would be given".*
16. *It is evident from the above that the calculation of profit after ignoring certain transactions was carried out at the behest of KTM investors and therefore the allegation that payments were made which are stated to be profits was not to mislead KTM investors as alleged or at all. In fact the KTM investors were always aware that the pay-out was in the form of option sale premium pay-out as observed from the above communication. Therefore, the allegation of SEBI is incorrect.*
17. *It is therefore submitted that:*
    a. *The Profit Arm Document does not specify any "Profit Payouts" as stated in the Annexure F II to SSCN*
    b. *That the "Profit Arm Document" was prepared as per the method suggested by KTM Investors*
    c. *That true position of accounts were shared with KTM investors through profit and loss statements which are duly acknowledged by KTM investors*
    d. *That KTM investors were not misled about the losses in their accounts.*

Response to Clause A.1.6:

18. *From the aforesaid submission, it is evident that KTM investors had developed its own formula of calculating profits and the format was named "Profit Arm Document". Since the said document was made ignoring certain transactions, the profit / loss as per the back office records and that as per the "Profit Arm Document" were bound to be different. It is also evident that KTM investors were fully aware of the difference and the same has been accepted by acknowledging the physical statement of accounts.*
19. *Even further the same allegations of KTM investors were considered, verified, tested and rejected by 6 Independent, Highly Learned and Experienced IGRP members and Arbitrators and therefore the allegations of SEBI with respect to profit*

payouts which are at variance with the actual positions may be set aside without going into further merits

20. *Further as submitted above, Email II in Annexure D to Fll does not mention the word "profit payouts" whereas the SCN wrongly alleges that these were profit pay-outs.*
21. *The difference in the table and Annexure K referred to in clause A1.6 is due to the difference in the method of arriving profits as per the profit arm document and therefore actual amounts as per global report are different from "Profit Arm Document" numbers.*

Response to Clause A.1.7:

22. *The submissions to finding no. A.1.6 and earlier submissions clearly go to prove that there is no link between payouts and profits as confirmed by KTM investors vide their various correspondences which have been extracted in the foregoing paragraphs. Calculation of profit in "Profit Arm Document" was carried out as per the method of KTM investors and surely the pay-out therein would match with ledger statements as these were paid to KTM investors.*
23. *For the reasons above we submit as under:*
    a. *Periodical payments were made as per the request of KTM investors and the same was also reflected in various documents including the Ledger, Mails etc. and had KTM investors not asked for these payments, they would have surely objected them when they received it.*
    b. *Nowhere has it been mentioned that the payments were in the form of profit pay¬outs. The email communications with KTM investors shows that they were requesting pay-outs for deep in the money options, which was ignored while calculating profit / loss as per the method provided by them. Therefore, it is denied that payments were termed as "profit pay-outs".*
    c. *Mails referred to in the Annexures had distinction between profits indicated therein (which were prepared basis methodology/ calculation suggested by KTM investors) which fact again has been established in the above referred documents / mails and payouts effected. There was no co-relation to profits and payouts. Even in the subject line of the email, it is mentioned as "profits and payouts" and not profit pay¬outs which clearly differentiates that the information pertained to profits and pay¬outs separately.*
    d. *The pay-outs have been made to KTM Investors in line with the Rules/ Regulations of SEBI / Exchange after retaining adequate margins and therefore the allegation of SEBI is denied. NSE Circulars dt. 07.09.2012 and 29.10.2013 pertain to settlement of funds and securities once in a quarter (at that point of time) and as such the parameters stipulated therein would come into play only at the time of quarterly settlement of funds and securities as envisaged under SEBI Circular dt. 03.12.2009 and shall not be applicable to other payouts. While effecting payouts which are sought for by clients, a stock broker will consider whether sufficient margins are available to cover open positions of clients and effect payout accordingly. Quarterly settlement details of KTM investors have been filed by us as part of the inspection documents and the same would go to prove that we have followed the parameters mentioned in NSE circulars referred above. As such there is no violation of any applicable circular with respect to payouts.*
    e. *We grossly deny that pay-outs were made as profit pay-outs. As aforesaid we reiterate that Profit and Loss was calculated as per the method suggested by KTM Investors and the regular Profit and Loss statements*

were also furnished to them. Therefore, the allegation that pay-outs were made to hide/understate the losses with an intention to earn brokerage and other allegations are absolutely incorrect.

24. *It is to be noted that KTM investors sold shares worth nearly Rs. 4.70 crores a major portion of which was utilized to clear debit balances in their accounts. The very fact that though the claim was initially raised before the NSE IGRP was subsequently dropped while filing a claim before the NSE Arbitration Tribunal. This was mainly because of the various documentary as well as voice logs based proofs submitted before the NSE IGRP to establish that sale of shares were authorized and confirmed by KTM investors. The said fact has been recorded by both the learned IGRP members as well as the Hon'ble NSE Arbitral Tribunal.*
25. *The learned NSE IGRP has stated that transactions effected in the accounts of KTM investors on 11.03.2015 and 12.03.2015 were effected with due knowledge and consent of KTM investors.*
26. *The Hon'ble Arbitral Tribunal has made a more categorical observation that KTM investors never claimed sale proceeds of securities sold in March 2015 as the sale was obviously the outcome of their earlier transactions and losses. The Hon'ble Arbitral Tribunal also has given a finding that KTM investors wisely dropped their claim on sale of shares effected in March 2015 as learned NSE IGRP has dismissed the claim.*
27. *When independent, learned and highly experienced members of IGRP and Arbitration Tribunal have given a clear finding with respect to KTM investors knowledge of losses and sale of shares to offset such losses, post perusal voluminous documents submitted by both parties and post hearing both parties extensively, a different stand cannot be taken that KTM investors were unware of their losses. The losses mentioned in Table IV have been offset through sale of shares in March 2015 and May 2016.*
28. *In light of the above it is denied that pay-outs were made as profit pay-outs to KTM investors to make them believe that they are making profits and to hide/ understate the losses so that they can continue to trade and ABML continues to earn brokerage.*

A.2 Difference in Profit and Loss Statements sent to Clients:

29. *It needs to be appreciated that all reports can be generated with different options like reports at market rates, reports with brokerage and charges etc. These options in reports allow the clients to check not just their trades but also help them in understanding brokerage and charges levied upon them. Further reports in Annexure N are different from those in Annexure P in as much as the report in Annexure N contains the contracts that are settled within that financial year and also open contracts whereas Annexure P contains only contracts which were closed within that financial year. As a result, the Profit and Loss figures of both these reports are bound to be different. However, for all the contracts that are settled, both these reports will show the same profits and losses.*
30. *It can be observed that profits and losses of individual contracts that are closed and settled during the financial year are tallying in both these reports. The difference is only because of the open contracts which are not taken into account in Annexure N. A table reflecting the reconciliation of both reports is give hereunder:*

Table 1 - List of open contracts and profit / loss thereon for Leena Mody for FY 12-13:

Contract	*Open Quantity*	*Profit / loss in Open Contracts*	*Remarks*

AMBUJACEM 0 280313 200 CE	*-2000*	*5790*	*Though the expiry date has arrived, posting of bill is done in the next financial year due to yearly closure of books*
NIFTY 0 250413 5400 PE	*-3000*	*69600*	
NIFTY 0 250413 5900 CE	*-3000*	*53400*	
RELIANCE 0 250413 740 PE	*-4000*	*28540*	
RELIANCE 0 250413 840 CE	*-4000*	*33102.5*	
TOTAL		*190432.47*	

Table 2 - Reconciliation of profits and loss for report with open contracts and report without open contracts:

Profit / Loss as per report without open positions (Annexure P)	*-361964.24*
Difference due to open position (as per Table 1 above)	*190432.47*
Profit / Loss in Annexure N including open positions	*-171531.74*

From the above sample it can be construed that information in Annexure N and Annexure P is similar and correct with the difference being due to open contracts inclusion in one format and exclusion thereof in the other format.

A detailed comparison of these reports for Financial Year 12-13 for all KTM investors is annexed as Annexure 12.

31. *Above all, we have obtained duly acknowledged statements of accounts from KTM investors for various financial years, copies of which are annexed as Annexure 13 (Colly). This also goes on to substantiate that KTM Investors are fully aware of all these facts, but have filed false complaints against us which were dealt with by 6 Independent, Highly Learned and Experienced IGRP members and Arbitrators and all claims of KTM investors have been rejected.*
32. *The Reports in Annexure 0 have never been provided by us and therefore do not warrant any analysis. Contents therein are denied to the extent they do not tally with our records.*
33. *The Reports in Annexure J were prepared at the behest of KTM investors as per their method of calculation, which has been established vide our submissions in the foregoing paragraphs. As such comparison of profit and loss statements with Annexure J documents is not possible. Moreover, Annexure J documents were summary sheets prepared basis certain parameters and methodology suggested by KTM investors and is not inclusive of Deep In the Money contracts as reflected in various emails of KTM investors.*
34. *Response to clause A.2.1 is already provided hereinabove and in the interest of brevity the same in not reproduced.*
35. *Clause A.2.2 records our response furnished earlier, the same does not warrant any reply.*

Response to Clause A.2.3:

36. *We have explained the reason for difference in the various profit and loss statements as provided in the response to clause no. A.2 is because of year end open positions being included in some reports and not in others. Therefore, there is no discrepancy in any of the reports as alleged.*

Response to Clause A.2.4:

37. *We deny having issued hard copies of reports annexed in Annexure O and deny the contents therein so far as they do not match with our records.*

Response to Clause A.2.5:

38. *As aforesaid, hard copies annexed in Annexure O were not provided by us and therefore the comparison thereof in Table VI is not responded to. Only the relevant section of comparison of soft copies in Annexure N and Annexure P is responded hereinafter.*

Kamlesh Mody:

39. *With reference to the email for FY 13-14 we submit that the attachment therein reflects the correct position and profit and loss in the column "N. Value" i.e. 15,01,429.98 which tallies with the Options Closing Arbitrage Position report. The contents of last column "Profit/Loss" is based on the method suggested by KTM investors and is therefore bound to be different. Above all Mr. Kamlesh Mody has physically acknowledged the profit and loss statement by affixing his signature for the financial year 2013 - 14 which also reflects the same figure i.e. Rs.15,01,429.98. The duly acknowledged profit and loss by Mr. Kamesh Mody is annexed as Annexure 14.*
40. *Moreover Mr. Kamlesh Mody has also acknowledged and confirmed the statement of accounts which clearly reflects an overall debit balance of Rs. 15,12,682.12 as on March 31, 2014 would also go to support the contention. Duly signed and acknowledged Statement of accounts of Mr. Kamlesh Mody is given as Annexure 15.*
41. *Similarly, Mr. Kamlesh Mody has acknowledged his profit and loss statements for FY 2014 - 15 and FY 2015-16. Copies of the same are once again filed as Annexure 16 (Colly). The hard copies of Annexure O are denied to the extent they do not tally with our records.*
42. *The profit and loss statement shared by mail (Annexure N) for the FY 2013-14 was as per the methodology suggested by KTM investors as accepted and confirmed by them in various mails/ documents shared vide earlier Annexures. However even in the said document, the difference between the Total Purchase Value and the Total sales value would still reflect the correct profit and loss figure of Rs. 15,01,129.98. As the calculation in this email was done as per the method specified by KTM the net profit / loss is bound to be different from that in Annexure P.*

Kamlesh Mody HUF:

43. *As aforesaid the contents of Annexure O are denied as these statements were not issued by us. Further we would like to submit that Mr. Kamlesh Mody has acknowledged his profit and loss statements from FY 2014-2015 to FY 2015-16. Copies of the same are once again filed as Annexure 17 (Colly). These acknowledged copies reflect the same profit/ Loss as in Annexure P.*

Leena Mody:

44. *We would like to submit that the difference in the mails dt. 04 June 2013 was due to inclusion of open position in one report and exclusion thereof in another and has been explained in the foregoing paragraphs. We file the comparison table vide Annexure 12.*
45. *We would also like to submit that the hard copy of profit and loss statement (Annexure O) for the financial year 2013 - 2014 was not provided by us. We would like to further submit that Ms. Leena Mody has acknowledged and confirmed her profit and loss statement pertaining to the said financial year wherein the loss of around 54 lakhs has been clearly reflected which tallies with Annexure P. Copy of*

the duly acknowledged statement for the financial year 2013-14 is filed herewith as Annexure 18.

46. *As regards the difference in profit and loss figures for the financial year 2014 - 2015 is concerned, we would like to submit that the mail dt. 10.03.2015 was sent as per the request of KTM wherein calculations were done as per the method of KTM. However, Ms. Leena Mody's authorized representative Mr. Kamlesh Mody had acknowledged the difference in profit and loss statement and the same was signed by him. Confirmation pertaining to receipt of actual profit and loss statement was also recorded in the same statement. The statement with open position projections are filed herewith as Annexure 19.*
47. *The statement containing actual profit and loss figures has been acknowledged and confirmed by Ms. Leena Mody and the same is filed herewith as Annexure 20. Profit and Loss statements for the year 2015-16 duly acknowledged and confirmed by Ms. Leena Mody is also filed herewith as part of the same Annexure 20. It is also not out of place to draw your attention to mail dt.27/03/2015 letter dt.23/03/2015 and letter dt. 28/03/2015 filed as Annexure 9 (Colly) filed hereinabove wherein KTM investors have clearly differentiated the statements prepared as per the methodology provided by them as well as the of profit and loss statements. As such the inference that different profit and loss statements were given by us to KTM investors is incorrect.*

Mitali Mody:

48. *We would like to submit that Ms. Mitali Mody has acknowledged her profit and loss statements from financial year 2013 -14 to FY 2015 - 16. Copies of the same are once again filed as* ***Annexure 21 (Colly).*** *This would disprove the hard copies filed by KTM investors along with their complaints and would match with the actual profit and loss statement being Options Closing Arbitrage Position figures. Ms. Mitali Mody has also acknowledged and confirmed the statement of accounts for financial year 2013 - 14 which clearly reflects an overall debit balance of Rs. 14,54,762.70 which would also go to support the contention. Copy of the statement of accounts confirmed by Ms. Mitali Mody is filed herewith as* ***Annexure 22***
49. *The profit and loss statement shared by mail for the financial year 2013-14 was as per the methodology suggested by KTM investors as accepted and confirmed by them in various mails / documents shared vide earlier Annexures. However even in the said document, the difference between the Total Purchase Value and the Total sales value would still reflect the correct profit and loss figure of Rs. 13,86,056.77.*

Sonali Mody:

50. *We would like to submit that Ms. Sonali Mody has acknowledged her profit and loss statements from financial year 2013 -14 to FY 2015 - 16. Copies of the same are once again filed as* ***Annexure 23 (Colly).*** *This would disprove the hard copies filed by KTM investors alongwith their complaints and would match with the actual profit and loss statement being Options Closing Arbitrage Position figures. Ms. Sonali Mody has also acknowledged and confirmed the statement of accounts for financial year 2013 - 14 which clearly reflects an overall debit balance of Rs. 11,37,332.27 which would also go to support the contention. Copy of the statement of accounts confirmed by Ms. Sonali Mody is filed herewith as* ***Annexure 24.***
51. *The profit and loss statement shared by mail for the financial year 2013-14 was as per the methodology suggested by KTM investors as accepted and confirmed by them in various mails/ documents shared vide earlier Annexures. However even in the said document, the difference between the Total Purchase Value and the Total sales value would still reflect the correct profit and loss figure of Rs. 10,75,023.23*

Rangraj Investments Private Limited:

52. *As regards the difference in profit and loss figures for the financial year 2013 - 2014 is concerned, we would like to submit that the mail dt.14/05/2014 was sent as per the request of KTM investors basis the method of KTM investors. However, Mr. Kamlesh Mody had acknowledged that they were calculations only in the profit and loss statement and the same was signed by him. Confirmation pertaining to receipt of actual profit and loss statement was also recorded in the same statement. The statement with calculations only remark is filed herewith as* ***Annexure 25.***
53. *We would like to submit that the difference in the mails dt. 04/06/2013 and 06/08/2013 were clarified in the foregoing paragraphs. We pray that the same be read as part and parcel of this reply. We have also filed the comparison table vide* ***Annexure 12.*** *We would also like to submit that the hard copy of purported statement (Annexure O) for the financial year 2013 - 2014 was not provided by us. We would like to further submit that Mr. Kamlesh Mody has acknowledged and confirmed the profit and loss statement pertaining to the said financial year, wherein the loss of around Rs. 99 lakhs has been clearly reflected. Copy of the duly acknowledged statement for the financial year 2013-14 is filed herewith as* ***Annexure*** *26.*
54. *We would like to further submit that the hard copy of the purported statement (Annexure O) containing profit figures of Rs. 70,058.23 for financial year 2014-15 has not been provided by us. The statement containing actual profit and loss figures for financial year 2014 - 15 and for financial 2015 - 2015 has been acknowledged and confirmed by Mr. Kamlesh Mody and the same is filed herewith as* ***Annexure 27 (Colly).*** *It is also not out of place to draw your attention to mail dt. 27/03/2015, letter dt. 23/03/2015 and letter dt. 28/03/2015 filed as* ***Annexure 9 (Colly)*** *wherein KTM investors have clearly differentiated the statements prepared as per the methodology provided by them as well as the correct set of profit and loss statements. As such the inference that different profit and loss statements were given by us to KTM investors is incorrect.*

Response to Clause A.2.6:

55. *Profit and Loss Statement reflects the profit/ loss from the transactions. The report is based on buying and selling price and direct charges on turnover like brokerage, STT, Stamp Duty etc. However, DPC is not on a contract note turnover basis, but is based on debit balance in the ledger and therefore the same cannot be allocated as a direct charge on the transactions as it is impossible to find out how much DPC was levied for each trade. Therefore, the report generated from our back office software is correct and no fault can be found with the report.*
56. *We use leading back office software that is used by several other market participants. The reports generated from our software are similar to those of several market participants who use this software. Further the DPC and such other charges are reflected in the ledger. Apart from this even the other entries like Dividend etc. are also only reflected in the ledger and not a part of the reports mentioned in your letter. Above all SEBI has issued a format of Annual Global Transaction Statement which is similar to the reports from our software and that too does not direct inclusion of Delayed Payment in the said report.*

Response to Clause A.2.7:

57. *All observations in clause A.2.7 pertain to Annexure 0. We reiterate our earlier submission in this regard and therefore no further comments are warranted. Further it may be noted that the differences in many statements are on account of*

method of calculation suggested by KTM investors as explained in a detailed manner in the foregoing paragraphs.

Response to Clause A.2.8:

58. *The contents of the emails dated October 12, 2015, November 17, 2015 and December 12, 2015 reflect the profits calculated as per the method of KTM Investors. A detailed month on month profit working as per the said method is also included in Annexure J of SEBI letter and the contents of these emails exactly tally with the details in Annexure J.*
59. *Further the very fact that KTM investors had been signing the profit and loss statements for the same periods wherein the losses have been evidently provided, would go to prove that KTM Investors were aware of the calculations under both methods and tried to take advantage by relying on selective documents with an intention to extract money from us, which has been tested and rejected by 6 Independent, Highly Learned and Experienced IGRP members / members of Arbitral Tribunal who have unanimously appreciated the fact that the difference in Profit and Loss statements was due to a different method suggested by KTM investors.*

Response to Clause A.2.9:

60. *We deny that Profit and Loss statements signed by KTM investors were only specific to certain periods. KTM investors have signed Profit and Loss Statements and the same is furnished hereinabove as Annexure 10. This was already submitted in the response to inspection team but they seem to have missed out on these statements. Along with Profit and Loss statements KTM investors have also acknowledged Ledger statement.*
61. *With regards to the email dated 25/02/2016 it is submitted that it was a unilateral email from KTM which was sent after he stopped dealing with us and was in the form of a contrivance to hatch the entire conspiracy of filing claim against us. The said claim was evaluated, tested by 6 Independent, Highly Learned and Experienced IGRP Members / Members of Arbitral Tribunal and has been unanimously rejected*
62. *Having provided unfaultable evidences to all the observations and allegations, we submit that all the observations have been negated. KTM investors were represented by Mr. Kamlesh Mody who is a practicing chartered accountant and also holds a law degree. His clients are "investment companies of Asian Paints Group', "finance companies belonging to Wadia Group" and various other manufacturing companies as stated by him in his Profile shared with us vide his mail dt. 29/04/2015. As such an assumption that Mr. Kamlesh Mody signed profit and loss statements repeatedly basis the so called assurances given by Mr. Hemant Thukral is not only illogical but also appears to be pre-determined.*

Response to Clause A.2.10:

63. *Vide letters / mails exchanged in March 2015, KTM investors had requested us to share certain reports as per the calculation method shared by them and the same was adhered to. At the same time, Surveillance Department had also sent profit and loss statements to few of KTM investors. KTM investors did not agree with the figures as they were tracking their transaction details on a monthly basis i.e. from start of an option contract to the end of the option contract (closed positions) and they would acknowledge / confirm profit and loss statements at the end of financial year or as and when sought for.*
64. *However, profit and loss statements shared by Surveillance Department were with open positions and from the start of the financial year. The entire mail content has*

not been taken into account or reproduced by SEBI. We once again annex herewith the relevant communication for your perusal as Annexure 28.
In mail dt. 06/06/015, addressed to KTM investors, Mr. Hemant Thukral has stated as follows:
"Already requested Surveillance not to send mail as they lead to confusion, will sit and discuss and discuss in person on Monday."
In mail dt. 09/06/2015 Mr. Mody himself has written to Mr. Hemant Thukral stating as follows:
"Dear Hemant Bhai one request from our side - please request your surveillance dept. to send monthly (expiry to expiry) updated profit and loss account in all our accounts instead of sending it randomly as our tracking is on month to month basis. Sending it randomly disturbs our main work. At least at the end of the month on the day of the expiry that month's P and L account (at the end of expiry) may be sent to us and also release the money as discussed within the next 2 working days.
I hope this will smoother) everything. I hope you will co-operate in this manner This will enable you to serve your clients better"

65. *The above email from KTM investors substantiates that the difference and concern of KTM investors was resolved, failing which he would not have known the reason for difference in email from surveillance and the one sent by branch officials to KTM investors.*
66. *Apart from the above KTM investors were provided with clarifications on each and every objection to Surveillance mails i.e. explanations were provided in person that figures shared by branch team would differ with that of Surveillance as the branch team had prepared and shared the reports basis ledger method suggested by KTM investors whereas profit and loss statement shared by Surveillance would contain open positions Mark to Market positions also. Copies of the explanations provided and the confirmation of KTM investors has been already filed herewith as Annexure 11 (Colly).*
67. *In fact, KTM investors have acknowledged and confirmed profit and loss statements pertaining to April to August 2015 period as well as September to December 2015 period would go to prove that they were aware of the actual profits and losses in their accounts and these acknowledgements are post June 2015 mails as well as December 2015 mail.*
68. *As such the finding that Mr. Hemant Thukral misled KTM investors with respect to their actual position so as to make them continue trading is blatantly wrong and the allegations thereto are denied.*
69. *Even the IGRP (constituted basis directions of SEBI) that examined the complaints of KTM investors has clearly stated that*
    a. *"Based on the documents submitted and interactions during this meeting, it is observed that the complainant was well aware about the happening's in the complainant's account".*
    b. *"Both parties submitted huge documentation in the case. However, the complainant did not conclusively establish the unauthorized nature of the disputed transactions".*
    c. *"It is observed that the complainant was kept informed by the TM about the debit balances in the complainant's account through various statements such as P&L statements, margin statement and communication dt. December 10, 2015 which was acknowledged by the Complainant".*
    d. *"It is observed that the TM has followed existing guidelines prescribed by the regulatory authorities, while executing disputed trades"*

e. *"TM provided P&L statements to the complainant in the format suggested by the complainant, which did not reflect M to M losses. This format was different from the regular format used by the TM. Variations in these two versions of P&L were clarified by the TM from time to time to the satisfaction of the complainant and this has been confirmed by complainant as could be observed from signature of the complainant with remark 'ok".*

f. *"It was also observed that the complainant has accepted various ledger statements and P&L statements from time to time by affixing the signature.*

g. *"It was observed that the relationship between the complainant and the TM was that of "broker" and "investor". The TM also clearly stated this aspect. The complainant's dealings in the account were found to be independent of each other within KTM investors"*

70. *The above findings of the IGRP constituted as per directions of SEBI clearly negates the findings of SEBI. Further the fact that both KTM investors have acknowledged profit and losses even after their objections to Surveillance mails would go to prove that they had prescribed the process and methodology of report preparation and they had accepted explanations offered in this regard. Loss increased post such denials and even such losses were also acknowledged and confirmed by KTM investors. Above all we had clearly contented that SEBI has neither directed brokers to issue profit and loss statements nor has prescribed any format thereto and as such cannot give a finding against issuance of profit and loss statements or other reports that were shared on the requests of KTM investors basis the methodology suggested by them.*
71. *As such the observations in Point A1 and A2 stating that profit payouts were given when accounts were actually in losses, that various incorrect statements/ reports which were at variance with actual profit and loss statements, that fictitious profits have been declared and that we distorted the actual position by concealing facts, to ensure continuous trading by customer is false and are devoid of merits. The conclusion is blatantly incorrect as SEBI brushed aside voluminous records submitted in this regard without any rhyme or reason.*
72. *It is therefore submitted that we have not violated Regulation 3 (a), 4 (1), 4 (2) (I), 4 (2) (m), 4 (2) (o) and 4 (2) (p) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003, and Clause (A) (3), A (5), and (B) (4) (b) of Code of Conduct mentioned in Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.*

Annexure FIV

Losses are covered by premium on sale of options and shown only at the later stages

73. *KTM investors were interested in receiving regular pay-outs and as a result options were sold by them since inception of their account. Further other trades were also carried out from time to time. The allegation of selling options to conceal the losses and issue pay-outs is absolutely incorrect because KTM investors sold options regularly even before February 2014 when they were in profits. Further these accounts again came into profits from June 2014 to November 2014 and during this period also the options were sold and pay-outs were taken. We therefore submit that selling of options for pay-out has no correlation with profits or losses as alleged or at all.*
74. *The above contention is substantiated from the email of Mr. Kamlesh Mody dated March 27, 2015 where he has himself recorded the discussion of minutes where point 5 quotes "Pay Out would be done at the end of every expiry if ledger in credit*

due to Profit / Option Credit selling." Copy of the email is annexed as Annexure 29. This email substantiates that he was aware that pay-outs are not just dependent on profits but are also done for options sale and therefore the allegation that credit of option sale were to suppress the losses is incorrect.

75. *Trades are executed in futures and options segment based on available margins as per the direction of KTM investors. Profits or Losses arising thereto are to the account of KTM investors and we do not have any obligation towards the same. The email (filed as Annexure 29 above) from KTM investors clearly substantiates that KTM investors were fully aware that pay-out is for Options Credits as well as Profits if any. Therefore, the allegation that Options Contracts were sold to generate credits and conceal losses is absolutely untenable.*
76. *We deny that the clients had a passive role as alleged or otherwise. All trades were effected basis instructions of clients and we have filed the confirmations thereon vide Annexures 30 & 31.*
77. *Also the fact that clients sold substantial amount of shares in March 2015 (Rs.4.5 crores) and December 2015 (1.05 crores) to offset the requirement of receiving funds pay-in, would go to negate the observation of SEBI that they were oblivious of the losses and merely relied on option credits to evaluate their positions.*
78. *SEBI has highlighted certain events of losses based on the transactions. It is submitted that losses and profits are inevitable and singling out loss transactions and seeking explanations thereto is unwarranted. In any case the clients have benefited from their profit transactions and losses have accrued to them when the trades ended up against their positions. We cannot be called upon to explain the reasons for losses in the account of the clients. Without prejudice to the forgoing it is submitted that the instance of loss of Rs. 2.36 crores is also incorrectly analyzed by SEBI. On detailed scrutiny we have observed that the client had sold the calls and puts of same quantity and the benefit from sale of both these legs collectively has not been taken into account. On August 24, 2015 there was a huge fall in Nifty due to several factors inter alia including China woes, Crude oil price, Rupee fall, Sharp sell offs by foreign investors, Wall Street's sharp plunge. A report of Business today is annexed herewith as Annexure 32. No one can be expected to foresee the future but in hindsight we submit that the trades would have given profits if they were squared off before that day which is purely the discretion of respective client.*
79. *It is submitted that losses cannot be attributed to the Broker as sought to be done in Annexure FIV particularly when transactions were undertaken by the respective customers.*
80. *Issuance of pay-out is not related to generation or profits or otherwise. Payments can be made to clients as and when demanded and possible. These can be for various reasons inter alia including sale of securities in their account (whether at profits or losses), payment against credit balance in the account for various reasons including MTM credits, sale credit of option, release of margins, dividend credits etc. In case of KTM investors also the payments were made for several of the above reasons and not only against profits. Without prejudice to the forgoing an instance wise explanation to the observations recorded in Table VI is given hereunder:*
    a. *Mr. Kamlesh Mody had actually booked profits on transactions carried out by him in the month of May 2014 and June 2014 to the tune of Rs. 18.79 lakhs and only a part of the same was paid out to him. Details of transactions and profits earned thereof are extracted hereunder for your kind reference. Likewise, he again earned profits to the tune of Rs. 7.29*

lakhs from June 2014 and August 2014. As such the payout of Rs. 4.68 lakhs & Rs.2.56 was made to him in August 2014 and September 2014.

b. *Kamlesh Mody HUF wanted back the margin amount of Rs. 5,00,000/- paid by him in cash in December 2014 and as such a payout was effected. However instead of effecting a payout of Rs. 5,00,000/- we had marked a payout of Rs. 10,00,000/- and as such Kamlesh Mody HUF returned the excess payout Rs. 5,00,000/- It was not a profit payout or even payout of Option Premium Credit.*
c. *Mitali Mody, we would like to submit that the client earned profit of Rs. 3.76 lakhs in July 2014. The client also gained profit of Rs. 29,67,095.45 till 09/09/2014. As such payout of Rs. 3.88 lakhs and Rs. 2.65 lakhs were paid out to Ms. Mitali Mody in August 2014 and September 2014. Further payout of Rs. 3.5 lakhs was affected basis the sale consideration received through sale of shares affected by Ms. Mitali Mody on 12/03/2015.*
d. *Rangraj Investments Private Limited had earned a profit to the tune of Rs. 1.45 crores during the months of May 2014 to October 2014 and payouts to the tune of Rs. 93.08 lakhs were made to the client from August 2014 to December 2014.*
e. *Sonali Mody had earned profits in the period prior to the payouts. In the month of July 2014, she had a profit of Rs. 2.99 lakhs and from August 2014 till 09/09/2014 she had booked profits to the tune of Rs.3,83,18. As such the payouts effected to Sonali Mody in the months of August 2014 and September 2014 is related to profits earned by her.*

81. *It is submitted that the profits earned by clients in various months are not taken into account. Only losses are arbitrarily highlighted.*
82. *It is incorrect to mention that the clients were not informed about losses. We submit that the clients had received profit and loss accounts regularly which are duly acknowledged by them. Pay-ins were not necessary as the requirements of margin collection were always met and shares were sold from time to time. The allegation that payouts from option sale was wrongly presented as profit pay-out is addressed hereinabove. All additional positions were taken in compliance with margin requirements and no fault can be found with them. As regards to the strategy it is for the clients to decide what strategy to implement and what to reject and ABML cannot be held responsible for it. Losses and profits may happen and the same are acknowledged by them from time to time.*
83. *Brokerage and Delayed Payment Charges are levied based on pre-agreed terms and cannot be found fault with as the transactions were done only after the clients' consent and not before.*
84. *As such there is no failure in exercise of due skill, care and diligence and we are not in violation of clauses (A) (1), (A) (2) and A (5) of Code of Conduct of Schedule II read with Regulation 9 SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and Regulation 3 (a) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.*

FV - Delayed pay-in charges and Late pay-in charges are levied as per the agreement / understanding / consent of clients

85. *SEBI has always preferred to discourage clients from using Broker's funds and has permitted brokers to charge DPC to clients where the clients do not make payments in a timely manner. In line with the circulars of SEBI and Exchanges we have preferred to discourage the clients from using our money and in case they end up using our money, we have charged them DPC so that they clear their dues at the earliest. This is the standard policy for all our 3.5 lakh clients and is not specific to*

KTM investors or other clients mentioned in Annexure FV to the SCN. As these clients preferred to use our funds, the consequential DPC has been charged to them as per the agreement and no fault can be found with it.

86. *As regards Late Payin for F&O Exposure, we would like to also draw your kind attention to the margin collection process of NSE. As per NSE portal, at least 50% of the effective deposits should be in the form of cash i.e. even if approved demat securities are deposited with the Exchange, at least 50% value of the securities ought to be deposited in the form of cash. However, clients had predominantly provided securities to meet their margin requirements. Whenever there is a shortfall in cash margin component we had to place the same with Exchange even if the same is not paid by the respective clients. As we are borrowing the funds and placing the same with Exchanges through Clearing Member, we charge interest on 20% cash component shortfall instead of 50% cash component shortfall of margins payable on futures and options positions. Snapshot of NSE website is attached herewith for your kind reference as Annexure 33. Even SEBI circular dt. 25.02.2020 states that cash to collateral ratio has to be maintained.*
87. *We would like to further submit that interest rates were charged in accordance with the rate of interest agreed upon. As regards Table II charges we would like to submit that the charges were debited in accordance with the agreement. In fact, whenever there is a shortfall in either margin or in case of debit, intimation is sent through SMS informing the client to clear the same. Failure to clear the debit will result in charging of Delayed Pay-in Charges / Late Pay-in Charges. SMS Log with respect to clearance of debit balances are shared herewith as Annexure 34. Further all these charges are reflected in the statement of accounts of clients and they have acknowledged and confirmed the transactions in the statement of accounts from time to time which would also go to prove that they are aware of the charges and the reason as to why those charges are levied. Copies of the Statement of Accounts acknowledged and confirmed by clients reflecting Delayed Pay-in Charges as well as Late Pay-in Charges are filed hereinabove as Annexure 13 and as 35 respectively).*
88. *Further the delayed pay in charges or late pay in charges are not due to payouts effected in the account of the respective KTM investors but due to debits arising out of losses sustained by the customers on transactions post payouts or due to shortfall in margins on positions availed by them post payouts. Explanation (on sample basis) for levy of delayed pay in/ late pay in charges that are reflected in Table III is given hereunder:*

    Sample 1 - Kamlesh Mody

    The delayed payment charges of Rs.16,897.47 was levied on 31/12/2014 in the account of Mr. Kamlesh Mody for the period 22.12.14 To 30.12.14, wherein Mr. Mody's account was in a debit. However, Mr. Mody's account came into credit on 30/12/2014 and payout was effected on the same day. As such it is incorrect to state that the accounts of KTM investors came into debit balance due to payouts and delayed payment charges were levied on the said debits. The period for which delayed payment charges are levied is clearly mentioned in the SOA itself which was not taken into account by SEBI

Date	Ledger balance (Debit)	Delayed Payment Charges
22/12/2014	6042652.81	3807.69
23/12/2014	5190869.91	3270.95
24/12/2014	4189735.64	2640.10
25/12/2014	4189735.64	2640.10
26/12/2014	2039722.38	1285.30
27/12/2014	2039722.38	1285.30

28/12/2014	2039722.38	1285.30
29/12/2014	1083563.53	682.79
30/12/2014	Credit	Nil
	Total	**16897.47**

The debit entry for Rs. 16897.47 is reflected in the ledger on December 31, 2014 and the calculation for all other debits remains the same.

Sample 2 - Kamlesh Mody HUF

The delayed payment charges of Rs.666.86 was levied on 17/03/2015 in the account of Mr. Kamlesh Mody HUF for the period 10.03.15 To 16.03.15 wherein Kamlesh Mody HUF account was in a debit. However Kamlesh Mody HUF account came into credit on 16/03/2014 and payout was effected on the same day. As such it is incorrect to state that the accounts of KTM investors came into debit balance due to payouts and delayed payment charges were levied on the said debits. The period for which delayed payment charges are levied is clearly mentioned in the SOA itself which was not taken into account by SEBI.

Date	Ledger balance (Debit)	Delayed Payment Charges
10-Mar-2015	1,18,588.61	38.98
11-Mar-2015	1,16,309.11	38.23
12-Mar-2015	4,39,835.78	144.60
13-Mar-2015	4,51,206.28	148.34
14-Mar-2015	4,51,206.28	148.34
15-Mar-2015	4,51,206.28	148.34
	Total	666.86

Sample 3 - Leena Mody

NSE penalty of Rs. 8063.57 was levied for shortfall in margins on 27/11/2014 when the trading account of Ms. Leena Mody was also in debit. However, her account came into credit on 02/12/2014 to the tune of Rs. 59,66,075 and a payout of Rs. 8,90,000/- was released to Ms. Leena Mody. This clearly shows that penalty got caused due to margin shortfall even before the payout was issued and that too when the account was in credit and not as incorrectly indicated in the report. The date of shortfall resulting in penalty is also indicated in the statement of accounts of Ms. Leena Mody.

Sample 4 - Rangaraj Investments Pvt Ltd

The delayed payment charges of Rs5305.67 was levied on 11/11/2014 in the account of M/s. Rangaraj Investments Pvt Ltd for the period 31/10/2014to 02/11/2014. However, of M/s. Rangaraj Investments Pvt Ltd account came into credit on 03/11/2014 and payout was effected on the same day. As such it is incorrect to state that the accounts of KTM investors came into debit balance due to payouts and delayed payment charges were levied on the said debits.

Date	Ledger balance (Debit)	Delayed Payment Charges
31-0ct-2014	28,06,624.99	1768.56
I-Nov-2014	28,06,624.99	1768.56
2-Nov-2014	28,06,624.99	1768.56
Total		5305.67

Sample 5 –Sonali Mody

The delayed payment charges of Rs 862.12 was levied on 15/09/2014 in the account of Ms. SonaliMody for the period 08/09/14 and 09/09/2014. However, Ms.

SonaliMody's account came into credit on 10/09/2014 and payout was effected on the same day. As such it is incorrect to state that the accounts of KTM investors came into debit balance due to payouts and delayed payment charges were levied on the said debits.

Date	Ledger balance (Debit)	Delayed Payment Charges
8-Sep-2014	10,99,766.10	693.00
9-Sep-2014	2,68,384.08	169.12
Total		862.12

89. *Delayed pay in charges are no way connected to payouts. Payouts are released as per the instructions of the client and not all payouts result in shortfall to an extent that DPC would be charged.*
90. *Decision to effect payouts were not taken by ABM as asserted. It was based on instructions of KTM investors. Further the assertion that each of the transactions were initiated by ABML without prior consent of clients as well as without seeking additional pay-ins from customers and decision to charge additional delayed payment charges to clients are incorrect and are denied. We have established that the investment decisions were that of clients both through documents as well as through voice logs. Even the NSE IGRP constituted basis SEBI directions has given a clear finding in their order that orders were placed by KTM investors. It is also not out of place to state that delayed pay-in charges / late pay-in charges were levied only on funds that were deployed on behalf of clients and not otherwise. Moreover, there is no bar from SEBI on charging interest on debit balance of clients.*
91. *KTM investors were aware of delayed payments charges getting levied from inception. The very fact that they have requested for reversal of delayed payment charges would go to clearly prove that we did not induce KTM investors to trade.*
92. *Both delayed pay in and brokerage are permitted levies and are charged to clients as per pre- agreed terms and conditions. Brokerage has always been far less than the permitted limits of SEBI and had the intention been to earn more brokerage, we could have charged higher brokerage. Further delayed payment charges are also lewied only when our funds are deployed. Like in the case of KTM, they already received a payout of Rs. 8.16 crores. So receiving payout from time to time has been to their benefit and not to their detriment as quoted in SEBI report.*
93. *As regards KTM investors, major portion of the delayed payment charges i.e. to an extent of Rs. 1.11 crores were levied post December 2015 i.e. after the transactions were stopped by KTM investors. It is submitted that despite repeated reminders through repeated SMS, KTM investors failed to clear their debit balances. However, we had to necessarily settle these debit balances with the respective Exchanges with borrowed funds and as such we are forced to levy delayed payment / late pay in charges to KTM investors.*
94. *As such it is incorrect to state that we have gained substantial sums in the form of delayed payment / late pay in charges whereas customers were making losses. Reference is drawn to the profit and loss statements as well as statement of accounts duly acknowledged by clients to substantiate the above submissions.*
95. *It is submitted that reversal of delayed payment charges / late pay in charges are at the discretion of the company. Such discretion was used a few times and certain delayed payment charges were reversed for KTM investors.*

In light of all the above submissions, we would like to submit that we are not in violation of Clause (B) (4) (a) and (b) of the Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and

Regulation 4 (2) (l) and (o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

10. Pursuant to the appointment of the undersigned as AO, a personal hearing was held in the matter on December 23, 2020. The said hearing was attended by the following authorized representatives (**ARs**) on behalf of the Noticee – Mr. Pradeep Sharma, Mr. Murali Krishnan and Mr. Ravi Ramaiya. In the said hearing, the ARs reiterated the submissions of the Noticee made in the Noticee's reply dated July 05, 2020, July 25, 2020 and September 30, 2020. Further, the ARs sought 7 days of time to make additional submissions and accordingly time till December 30, 2020 was granted for the same. Vide letter dated December 29, 2020, the Noticee made the following submissions –

1. ***Details of complaint of Mr. Chandrakant Londe:***

The complainant was informed that he had not transacted through us during the period during which grievance was expressed and the complainant did not revert post receipt of our reply. Copy of the complaint as well as reply is submitted herewith for your kind reference as Exhibit No. 1 and Exhibit No. 2 respectively.

2. ***Settlement of funds and securities:***

a. *During the hearing our submissions with regards to having settled majority of the clients was taken on record. However, we were called upon to explain the reasons for non — settlement of the balance of Rs. 7,25,758.43 (funds) and securities worth Rs. 8,38,051.17 details of which are given in Exhibit No. 3 & 4. Supporting documents are submitted as Exhibit No. 5 & 6.*

b. *From the afore said exhibit it can be observed that all the instances are such where settlement is not practically possible and therefore in line with directions of SEBI / Exchange we have transferred unsettled amounts / securities to a separate bank account / demat account respectively.*

c. *At this juncture it is imperative to highlight that during the period under inspection, we have released 728.41 crores worth of funds and securities by way of settlement of accounts and the amounts in question i.e. Rs. 7,25,758.43 and Rs. 8,38,051.17 are no way material to the size and nature of business*.

d. *We have also submitted that though the amounts are trivial we have taken all efforts to settle them. However it is not possible to settle all the accounts for the reasons given hereunder*:

Reason	*Value of Securities*

Securities not traded/ Suspended	3,58,931.12
Invalid Pan	4,09,153.05
Securities that could not be transferred due non availability of ISIN in the Depository in which client has got demat account	*69,967.00*
Grand Total	**8,38,051.17**

e. *Further funds and securities have been separately kept in designated bank and demat accounts and no benefit therefrom has been derived by us.*

f. *Above all, SEBI / Exchanges have appreciated the possibility of certain amounts not being settled and have issued directions to Brokers on Feb 10, 2020 and in line with the directions of SEBI / Exchanges, we have transferred the unsettled amounts to a separate bank account. Securities have been transferred to a separate demat a/c which is also freezed by depository*

Having made all out efforts to settle clients by all means and having communicated the difficulties, we would like to be guided on any further measures which can be taken by us to settle these few clients. As such we would like to submit that we are not in violation of clause 12e of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 (annexure) of SEBI/HO/MIRSD2/CIR//P/2016/95 dated September 26, 2016.

3. ***Detailed explanation on securities with value of Rs. 5.41,502.76 transferred from client demat account to company demat account:***

a. *It was submitted that shares worth Rs. 2.38 lacs (involving 77 instances) were purchased on various occasions through our trading accounts bearing nos. 803 & 806 for testing purpose and were lying to the credit of the company. Contract notes evidencing the same are filed as Exhibit 8 alongwith our Written Submissions dt. 25.07.2020.*

b. *Screen shots of NSE UCC portal evidencing the ownership of the said trading accounts are also filed herewith for ready reference as Exhibit 9 to the Written Submissions dt. 25.07.2020.*

c. *It was further submitted that Rs. 2.53 lacs are due to impossibility of transferring 3rd decimal units to clients in case of Liquid Bees which got accumulated over several years. Further we have not disposed off these securities and are agreeable to deposit it to the IPF or any other funds as directed by SEBI.*

d. *It was further submitted that Rs. 50 thousand was due to settlement of corporate action received in fractions where credit was given to individual clients for their value of fractions.*

e. *It was further submitted that shares involving all 160 instances were continuously held in our Margin and Client Beneficiary Account till August 2018 and based on the advice of the inspection officials of NSE as old system*

of client beneficiary account was being replaced with "Client Unpaid Securities Account" and these were not unpaid securities and therefore could not be transferred to "Client Unpaid Securities Account". Extract of the relevant portion of the NSE ICMA report is given hereunder for your ready reference and also enclosed as Exhibit 7:

"d. Observations pertaining to own securities and funds
The Committee was apprised that own securities were lying in the client beneficiary demat account and the dividend pertaining to these shares were received in client bank account.
The Committee perused the following submissions of the member that:

At various points of time for the purpose of testing, were purchased/transferred to margin and beneficiary accounts and they were lying to the credit of the company.

The member is maintaining proper audit trail for all shares held in margin/beneficiary accounts and can be traced to the respective trading/demat accounts of parties i.e. proper segregation is available of shares owned by the member and shares owned by clients at all points of time.

The dividend on shares held in the margin and beneficiary account amounting to Rs.704/-, was received in the client bank account mapped to the respective demat accounts.

However, after getting direction from the inspection official, the own account shares were transferred to the own demat account and any dividend pertaining to the said scrip will be received in the own bank account.

The member has contended that they have not utilized any shares of the clients for own trading purposes at any point of time. Further, the member has claimed that all the shares pertaining to the own account were transferred to the own demat account.

The Committee after considering the submissions of the member observed that:

Post inspection, the member has transferred own account shares to the own demat account. However, the member has not provided supporting proof for transferring own securities to own beneficiary account.

On further verification it was observed that, in 179 instances pertaining to 133 scrips were lying in the client beneficiary/margin account and with respect to the same, the member has stated that they had received dividend amounting to Rs.704 only.

f. *It was further submitted that there is no disproportionate gain or unfair advantage to us due to the retention of such credit and the Notice also does not allege any such disproportionate gain or unfair advantage.*

g. *It was also submitted that no loss has been caused to the investors and there has not been a single complaint to that effect from any client.*

It was also pointed out that the observation of SEBI is a one off instance as SEBI has inspected on several occasions, but we have never been penalized for any of these violations or subjected to any notice.

PRAYER:
The above details / documents and submissions basis the same would clearly go to prove that we have conducted our business in accordance with the Acts, Regulations, Guidelines, Rules, Byelaws and Circulars of SEBI / Exchanges etc. as such are not in violation of SEBI Circular / NSE Circulars / Byelaws / Regulations indicated in the SCN.

11. Vide email dated May 05, 2021 it was communicated to the Noticee that the adjudication proceedings initaiated against it were based on Joint Inspection Report ('**JIR**') and SEBI-Southern Regional Office Special Inspection Report ('**SIR**') and that the findings of the aforesaid inspections were shared with it by SEBI vide letter dated May 29, 2019. The said letter and its annexures were once again provided to the Noticee as Annexure 1 and 2 in the email. Further, Noticee's replies dated July 02, 2019 and July 12, 2019 to the findings of the above inspection were attached as Annexure 3 and 4 respectively in this email. It was further clarified in the above email that the entire annexures to the Supplementary SCN are relied upon and are relevant to the present proceedings. Further it was stated that the annexures to the Supplementary SCN are based on the findings of SIR, which have previously been shared with the Noticee and on which the Noticee had furnished its reply/comments. Further, it was stated that the below table carries the observations as per SIR and the applicable provisions of law alleged to have been violated by the Noticee –

Annexure to the Supplementary SCN	**Alleged violation related to**	**Provisions alleged to have been violated by Noticee**

FI	Unauthorized Trading and Portfolio Management Services (PMS) to Unregistered PMS Clients	Regulation 14(1)(a) of SEBI (Portfolio Managers) Regulations, 1993, Clauses A (1), (2), (5) and B (7) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI (Stock-Broker) Regulations, 1992 and SEBI Circular no. SEBI/HO/MIRSD /DOP1/CIR/P /2018/54 dated March 22, 2018
FII	Misleading the clients by understating losses and overstating profits	Regulation 3(a) and Regulations 4(1), 4(2)(l), 4(2)(m), 4(2)(o) and 4(2)(p) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and Clauses (A)(3), (A)(5) and B(4)(b) of Code of Conduct mentioned in Schedule II read with Regulation 9 SEBI (Stock Brokers) Regulations, 1992
FIV	Losses are covered by premium on sale of options and shown only at later stages	Regulations 3(a) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, and Clauses A (1), A (2) and A (5) of Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992
FV	Delayed pay-in and late pay-in charges levied by Member	Regulations 4(2)(l) and (o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and Clauses (B)(4)(a) and (b) of the Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992
FVI	Lack of Adequate Systems and Internal Controls	Clauses (A)(1) and (A)(2) of Code of Conduct mentioned in Schedule II read with Regulation 9 SEBI (Stock Brokers) Regulations, 1992
X	Contains Annexures further referred in the aforementioned annexures	

Further, it was communicated that the alleged violations against the Noticee in the SCN and the Supplementary SCN, if established, makes it liable for penalty under the penal provisions of Section 15HB of the SEBI Act, 1992, Section 15HA of the SEBI Act, 1992 and Section 23D of SCRA, 1956, as applicable and copy

of the Communique dated April 19, 2021 was also provided to the Noticee as Annexure 5 in the aforesaid email.

12. Vide email dated May 10, 2021, Noticee *inter alia* requested for extension of time to submit its response to the above email dated May 05, 2021, owing to the lockdown imoposed by the Government of Tamil Nadu and the pandemic. Vide email dated May 11, 2021, the Noticee was granted time till May 26, 2021 to submit its reply and an opportunity of personal hearing on May 31, 2021. Vide email dated May 26, 2021, Noticee attached its letter dated May 24, 2021 wherein it *inter alia* submitted as follows –

    1. *This is in reference to the captioned mail dt. 05.05.2021 wherein you have directed us to submit our submissions (if any) to Annexures FI and FVI shared vide SSCN dt. 25.08.2020 ("SSCN") which were introduced for the first time vide the SSCN, which has been stated to have been inadvertently left out in dispatch.*
    2. *At the very outset, we state that the SSCN does not make out any charge against us and merely supplies us with a set of annexures running into 33 pages and which have been simply correlated with certain headings in the SCN. The SCN is the only document that sets out the charges against us and gives a reference to the facts that lead to the charges. Furthermore, the apparent reasoning given to issue the SSCN i.e., that the CD (written on August 21, 2020) was inadvertently left out in dispatch is incorrect and is nothing but, at this later stage, an attempt to include allegations which were, on an independent assessment of the facts and circumstances by the AO at the relevant point in time, correctly dropped and not included.*
    3. *Further it is submitted that reliance on an annexure can be placed only when there is a reference of the contents thereof in the SCN. It is relevant to appreciate that charges/ allegations in quasi-judicial proceedings stem from facts and circumstances that are recorded in the SCN itself. However, in the instant matter, the scope of the SCN is being enlarged by referring to Annexures, which are not at all relied upon or enumerated in the SCN. Such reliance, especially when the same was purportedly 'inadvertently left out' is against propriety, principles of fairness and natural justice.*
    4. *SSCN and your mail dt. 05.05.2021 fail to clearly set out the relevance of Annexure FI and FVI vis-à-vis the charges framed under the SCN. In fact, it has been stated in the SSCN that Annexure FI and FVI correlate to paragraphs 4A and 4B of the SCN. However, paragraph 4A and 4B do not even refer to any facts related to complaints and allegations made by KTM Investors and Mr. Luke, which constitute Annexures FI and FVI. In light of the same, it is submitted that the SSCN is rendered incoherent; has been issued in dereliction of principles of natural justice; and deserves to be set aside.*
    5. *Without prejudice to the foregoing and our contentions in respect of the validity and legality of the SSCN and any Annexures thereto, upon your insistence to file a reply to Annexure FI and FVI, we are submitting the same hereunder.*

6. *A perusal of Annexure FI and FVI, as provided vide the SSCN makes it clear that the same are contents of the inspection report of SEBI in the instant matter, provided to us prior to initiation of the adjudication proceedings vide SCN letter dt. 14.02.2020. It is submitted that we have already made submissions in respect of Annexures FI and FVI (i.e. the inspection report and its annexures) vide our reply dt. 12.07.2019 along with supporting documents. As stated in our earlier correspondence, since the proceedings have been initiated on February 14, 2020, after consideration of our reply dt. 12.07.2019, it is apparent that the previous Adjudicating Officer who was handling the matter had accepted the submissions made by us and had chosen not to convert every allegation of the inspection into a charge in the SCN. Accordingly, Annexures FI and FVI did not have any reference in the SCN. Hence, it is obvious that these documents cannot be surreptitiously introduced in the proceedings at this late stage of the proceedings.*
7. *While we maintain that Annexure FI and FVI of SSCN do not have any relevance to the SCN and do not attract the charges framed against us, as the basis of the allegations remain the same, without prejudice to our rights in this regard, we request you to treat our reply dt. 12.07.2019 along with supporting documents as part and parcel of this reply by reference. Despite the fact that this reply is already available on file, a copy of the same is being filed herewith as Annexure1. The contents are not being repeated herein for the sake of brevity except for certain salient points which ought to be considered.*
8. *The sequence of events is as under:*

   a. September 06, 2016, – Mr. Alexander Luke (Mr. Luke) files complaint with SEBI.

   b. October 20, 2016 – IGRP of NSE dismisses the complaint of Mr. Luke.

   c. September 27, 2017 – Mr. Kamlesh Mody and his family member (KTM Investors) file complaint with SEBI

   d. September 30, 2017 – Mr. Luke once again files complaint with SEBI

   e. February 05, 2018 to May 03, 2018 – SEBI initiates Special Inspection and seeks information from ABML in various tranches without providing an opportunity to submit our explanation on various queries.

   f. October 4, 2018 – SEBI writes to NSE directing initiation of IGRP to re-examine the complaints of KTM Investors and Mr. Luke and submit a report within 3 months.

   g. November 20, 2018 – NSE, Mumbai initiates IGRP proceedings as directed by SEBI on the complaint of KTM investors

   h. December 02, 2018 – We file our reply and present our defense before the IGRP, Mumbai on the detailed complaint filed by KTM Investors. This is the first time we got a chance to submit various documents and also put forth our arguments.

   i. October 30, 2018 – NSE IGRP, Chennai re-initiates proceedings against ABML on the complaint of Mr. Luke

   j. November 19, 2018 - Proceedings initiated by NSE - IGRP, Chennai on the complaint of Mr. Luke are challenged before the Hon'ble Madras High Court on the ground that the IGRP has already carried out proceedings on Mr. Luke's claim and the same has been rejected; that IGRP does not have the power to re- initiate proceedings. The Hon'ble Madras High Court appreciated the fact that once an IGRP is completed on a complaint the same cannot be re-initiated. Copy of the judgement of Hon'ble Madras High Court dt. 01.06.2020 is annexed as Annexure 2.

k. December 24, 2018 and December 26, 2018 – IGRP rejects the claim of KTM investors and issues an order in our favour on merits.
l. May 22, 2019 – KTM investors initiate Arbitral Proceedings challenging the IGRP order and the same was also dismissed on December 17, 2019.

In light of all 3 judgements being decided in our favour while rejecting the claims of KTM Investors and Mr. Luke, SEBI is estopped on account of res judicata and issue estoppel to re- open the complaint of KTM investors and Mr. Luke or proceedings initiated thereof under the pre-text of SCN, SSCN or annexures thereto

9. *Basis the above sequence of events, our submissions are as under:*
10. *It is submitted that in February 2018, SEBI conducted a Special Inspection based on the complaint of the KTM investors dt. 26.09.2017 and the complaint of Mr. Luke dt. 30.09.2017. Basis the observations of inspection officials, SEBI issued letter dt. 04.10.2018 directing the National Stock Exchange of India Limited (NSE) to get the complaints adjudicated by the IGRP of NSE keeping in view of the observations of SEBI. The observations inter-alia included the following:*
    a. Trades were executed and consent for the same for these trades were sought from investors only after execution of trades.
    b. Options contracts were sold on behalf of clients for making payouts (stated to be profit payouts) whenever there were debit balances in the clients ledger due to losses in the previous expiry period.
    c. Postponement of disclosure of losses/ hiding of actual losses and accumulation of heavy losses to the investors over the period.
    d. Multiple statements were provided to the investors claiming to be profit and loss
    statements which were at variance with actual positions.
    e. Non segregation of funds and securities of Mr. Luke and KTM investors and it appears that ABML might be indulging into Portfolio Management Services to these clients without entering into any agreement with them to provide Portfolio Management Services
    Copy of the letter dt. 04.10.2018 is filed herewith as Annexure 3.
11. *The IGRP (constituted basis directions of SEBI) that examined the complaints of KTM investors post verification of voluminous documents filed by both parties as well as hearing both parties over a period of 2 days has clearly held that:*
    a. "Based on the documents submitted and interactions during this meeting, it is observed that the complainant was well aware about the happenings in the complainant's accounts".
    b. "Both parties submitted huge documentation in the case. However, the complainant did not conclusively establish the unauthorized nature of the disputed transactions".
    c. "It is observed that the TM has followed existing guidelines prescribed by the regulatory authorities, while executing disputed trades".
    The above observations were based on the documentary evidence with respect to order / trade confirmations filed before the IGRP.
    d. "It is observed that the complainant was kept informed by the TM about the debit balances in the complainant's account through various statements such as P&L statements, margin statement and communication dt. December 10, 2015 which was acknowledged by the Complainant".

This finding was based on the P&L statements, Margin Statements and other communications samples, which were filed as part of the reply to the inspection report.

e. "TM provided P&L statements to the complainant in the format suggested by the complainant, which did not reflect M to M losses. This format was different from the regular format used by the TM. Variations in these two versions of P&L were clarified by the TM from time to time to the satisfaction of the complainant and this has been confirmed by complainant as could be observed from signature of the complainant with remark 'ok".

The above finding was based on the statements duly acknowledged while accepting the reasons for difference therein and other communications samples which were filed as part of the reply to the inspection report.

f. "It was also observed that the complainant has accepted various ledger statements and P&L statements from time to time by affixing the signature."

This finding was based on the Ledger statements and P&L statements which were filed as part of the reply to the inspection report.

g. "It appears that the relationship between the complainant and the TM was that of 'broker' and 'investor'. The TM also clearly stated this aspect. The complainant's dealings in the account were found to be independent of each other within KTM investors".

This finding clearly goes to prove that the allegation of providing Portfolio Management Services has been categorically disproved and dismissed.

12. *Basis the above findings/ observations all 3 IGRP members unanimously concluded that there was absolutely no merit in the complaints of KTM investors and did not admit any claim against us. IGRP orders of KTM investors are filed herewith as Annexure 4.*
13. *Being aggrieved with the decision of the IGRP members, KTM investors preferred to initiate arbitral proceedings and these proceedings were heard by an elite panel of 3 arbitrators including an ex-High Court Judge. It is pertinent to note that the panel member of the Arbitral Panel was selected by us. Form I filed by Mr. Mody is filed herewith as Annexure 5 to evidence the selection of arbitrators.*
14. *Taking a holistic view of the entire matter, the Hon'ble Arbitral Tribunal of NSE upheld the findings of IGRP rejected the claim of KTM investors and dismissed all the six cases in our favour.*
15. *The Learned Arbitrators have given the following findings/ observations while dismissing the claims of KTM investors:*

    a. "We have in extenso set out the Mody family case as elaborated in the statement of claim. On a plaint reading of the statement of claim one fails to discern a case of fraudulent misrepresentation resulting in fraudulent sale of shares worth Rs. 20 crores as sought to be made out by the Ld. Counsel Mr. Mody for the claimants. If anything, we find Mr. Kamlesh Mody, the head of Mody HUF and who was dealing with the Respondent Trading Member on behalf of all the family members (claimants) complicit in carrying out trades in the F&O segment leading to losses resulting in the Respondent having to sell their shares".

    b. "Mr. Kamlesh Mody is no "babe in the woods" as sought to be projected in the statement of claim. Mr. Kamlesh Mody is a CA of more than 30 years standing and was surely not unaware of the risk involved in trading on stock exchange which may be aptly described as a large casino where fortunes are made and lives destroyed. The handing over of securities worth Rs. 20 crores

as margin is symptomatic of the urge to gamble for huge stakes with the hope of making a fortune".

c. "Similarly the reliance placed by the claimant on SEBI letter dt. 04.10.2018 which allegedly records categorical finding against the Respondent is misplaced. By the said letter SEBI advised NSE IGRP to examine the complaint. The IGRP orders dt. 24.12.2018 and 26.12.2018 has dismissed the complaint with the following observations.

i. The complainant was kept informed by the TM about the debit balances in the complainant's account through various statements such as P&L statements, margin statement and communication dt. December 10, 2015 which was acknowledged by the Complaints Representative.

ii. It terms of trades executed, it is observed that the TM has followed the existing guidelines prescribed by the regulatory authorizations.

iii. It is also observed that the claimant has accepted various ledger statements and P & L statements from time to time by affirming the signature.

iv. It appears that the relationship between the complaint and the TM was that of 'broker' and 'investor'.

d. "The above IGRP observations clearly negate SEBI's observation in its order dt. 23.11.2017 and letter dt.m04.10.2018. Hence the claimant's case as argued by Ld. Counsel Mr. Mody and reliance placed by him on SEBI order deserves to be rejected. It was incumbent on the claimants to prove their case of unauthorized trading by the Respondent TM as set out in the statement of claim, which they failed to do".

e. "As discussed above, the Mody family has miserably failed to prove its charge of fraud and fraudulent misrepresentation and fraudulent sale of Mody family shares worth Rs. 20 crores against the Respondent, as sought to be made out in oral arguments by their counsel. The claimants have also failed to make out a case of unauthorized trading by the TM in their accounts which allegedly resulted in unauthorized sale of their shares worth Rs. 20 crores. The claim of Mody family members for re-instatement of shares sold in May 2016 including accretions thereon must therefore be rejected and their separate claim applications dismissed".

16. *The above findings / observations of the Hon'ble Arbitrators which were made after perusing voluminous documents filed by both parties to the arbitration as well as hear Senior Counsels over a period of 4 days would clearly go to prove that the allegations levelled in the complaint of KTM investors are false and misleading and that they are far from truth.*
17. *Both the IGRP and Arbitral Tribunal of NSE have categorically dismissed all the findings of SEBI as detailed in its letter dt. 04.10.2018 and as such the present proceedings under SCN and SSCN basis the same set of complaints is barred by the principle of issue estoppel as well as by res judicata. SEBI cannot seek to re-open the same again and the present proceedings under SCN and Sup. SCN ought to be dropped in toto.*
18. *Likewise, the IGRP constituted by NSE examined the complaint made by Mr. Luke and dismissed his claim. SEBI accepted the order of the IGRP, closed the complaint and advised Mr. Luke to initiate arbitral proceedings, if he chooses to. Copy of the SEBI letter to Mr. Luke is filed herewith as Annexure 6.*
19. *However, Mr. Luke instead of initiating arbitral proceedings, again lodged a complaint with SEBI as stated above and sought to reopen the same issue that was closed conclusively by IGRP. SEBI ought not to have entertained the complaint. However, post Mr. Luke. As reopening, re-agitating the same issue*

is barred by principles of issue estoppel as well as by res-judicata, we approached the Hon'ble High Court of Madras vide Writ Petition No. 30825 of 2018 and the Hon'ble High Court of Madras dismissed the order of SEBI directing NSE IGRP to re-examine the complaint of Mr. Luke. The Hon'ble High Court of Madras while passing the said judgement also held that:

"Reference must be made for this purpose to the law relating to finality of litigation, as deduced from various binding judicial decisions, which has been summarized below:-

(a) The doctrine of finality of litigation is founded upon two age old salutary principles of public policy, viz., interest reipublicae ut sit finis litium which signifies that it is in the interest of the State that there should be an end to litigation, and the other principle, viz., nemo debet bis vexari, si constat curiae quod sit pro una et eademn causa conveys that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities or by adopting a procedure prescribed by law. The other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice. In the absence of such principle, great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a resourceful and malicious litigant may succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The universally acclaimed rule of res judicata has been evolved to prevent such anarchy. (See M. Nagabhushana –vs- State of Karnataka [(2011) 3 SCC 408] and Union of India –vs- Major S.P. Sharma [(2014) 6 SCC 351])

(b) The rule of res judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should forever set the controversy at rest. That is why it is perceived that the plea of res-judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties. Any proceeding which has been initiated in breach of the rule of res judicata is prima facie a proceeding which has been initiated in abuse of the process of Court. (See M. Nagabhushana – vs- State of Karnataka [(2011) 3 SCC 408] and Union of India –vs- Major S.P. Sharma [(2014) 6 SCC 35]

(c) If a litigant has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. The adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in

respect of the matters of claim and defence. It also does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned. Such consequence follows both to an order from which an appeal lies but has not been preferred, as well as to an order from which no appeal is provided. In a country governed by the Rule of Law, finality of judgment is absolutely imperative to which great sanctity is attached and it is not permissible for the parties to re-open the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far reaching adverse effect on the administration of justice. (See Ambika Prasad Mishra –vs- State of Uttar Pradesh [(1980) 3 SCC 719], Direct Recruit Class II Engg. Officers' Assn. –vs- State of Maharashtra [(1990) 2 SCC 715], M. Nagabhushana –vs- State of Karnataka [(2011) 3 SCC 408] and Union of India –vs- Major S.P. Sharma [(2014) 6 SCC 35])

(d) It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata, but if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. (See K.K. Modi –vs- K.N. Modi [(1998) 3 SCC 573]).”

20. *The Hon’ble High Court of Madras also pointed out that there is no explanation from Mr. Luke for not having resorted to the next level of arbitration proceedings in terms of Chapter XI of the Bye-Laws of the First Respondent, if he was not satisfied with the adjudication made by IGRP of the First Respondent in the order dt. 20.10.2016, especially when the Petitioner even now agrees for adopting such course of action as mentioned in the relief sought in the Writ Petition.*
21. *The Noticee has relied on the judgements of Supreme Court in State of U. P. v. Nawab Hussain, (1977) 2SCC 806 and Hope Plantations Ltd. v. Taluk Land Board, Peermade and another, (1999) 5 SCC 590.*
22. *It is submitted that the above judgments make it clear that since the issues in relation to complaints of both Mr. Luke and KTM investors (including but not limited to unauthorized trades / portfolio management services / issuance of profit and loss statements etc.) have conclusively been decided by IGRPs’ of NSE, Hon’ble Arbitration Tribunal and Hon’ble High Court of Madras. The learned IGRPs’ of NSE have conclusively dismissed the claims of Mr. Luke and KTM investors. The Hon’ble Arbitral Tribunal has also dismissed the claim of KTM investors. Mr. Luke did not prefer any arbitral appeal against the order of NSE IGRP. As such all the proceedings related to the complaints of Mr. Luke and KTM investors has reached finality and SEBI cannot seek to re-agitate the very same complaints, in light of the plethora of judgments of the Supreme Court as well as High Court on the principles of res-judicate and issue estoppel. Therefore, the issuance of SCN & SSCN along with Annexures thereto is against settled principles of law. The issuance of the SCN as well as the SSCN is vitiated and the same ought not to be proceeded with.*
23. *It is also most pertinent to note that the IGRP and arbitration proceedings have taken place at SEBI’s instance and have conclusively adjudicated basis merits that there is no violation of any provision of law as alleged by SEBI in the SCN and SSCN including but not limited to SEBI Act, Stock Broker Regulations, FUTP Regulations, NSE FNO Regulations, Circulars etc. To the best of our*

knowledge, Mr. Luke has not initiated arbitral proceedings and arbitration awards against KTM investors have not been challenged and the IGRP order / awards have attained finality. SEBI cannot now re- agitate the issue against us, particularly considering that these proceedings have taken place basis SEBI's directions and the mechanism for adjudication has been prescribed by SEBI to the exchanges.

24. *It is therefore submitted that the facts and issues which form part of Annexure FI and FVI, and which are now being introduced in the proceedings, have already been adjudicated upon in prior proceedings and have attained finality and therefore cannot be gone into or re-agitated in the present proceedings. The fact of the issues having attained finality between the parties gives rise to "issue estoppel" and "cause of action estoppel" which now prevents SEBI from raising any of the issues raised in the IGRP or Arbitral Proceedings or for that matter initiate multiple proceedings basis the same issues / allegations. Agitating the same issues for the purported causes of action would clearly be against settled principles of natural justice.*
25. *It is submitted that the above developments were indeed available at the time of issuance of SCN dt. 14.02.2020 and the then adjudicating officer in her wisdom and basis the IGRP orders and Arbitral Award has chosen to drop several allegations including the allegations contained in Annexure FI and Annexure FVI though the same were recommended for adjudication by the inspection officials as evidenced in Annexure B – Relevant extracts - Post Inspection Analysis- Aditya Birla Money Limited.*
26. *The above findings would also go to substantiate and prove that:*

    a. None of our acts can be categorized as fraud or fraudulent transactions under PFUTP Regulations as all the documents stipulated by SEBI/ Exchanges shared with KTM investors and Mr. Luke or for that matter with all our clients. Over and above the same, SMS pertaining to orders placed, trades executed, profit and loss statements reflecting actual profits or losses and statement of accounts reflecting the payouts, charges etc. have been served and were duly acknowledged by KTM investors and Mr. Luke.

    b. Proof of KTM investors / Mr. Luke seeking calculations in a different format also on record which go to prove that we had been transparent in all our dealings with both these investors and the alleged incorrect P&L Statements being questioned by SEBI were calculations done at the behest of these investors themselves and not a fraudulent activity and hence the charge of PFUTP shall not hold good.

    c. None of our acts can be said to have been in the form of a manipulative or deceptive device or in contravention to the provisions of the Act, rules or regulations of SEBI

    d. As confirmed above by both IGRP and Arbitral Tribunal, all trades are genuine, bonafide and not at all manipulative or deceptive nor are a part of any contrivance and were done basis the directions of investors. Had that not been the case IGRP members and Arbitrators in case of Mr. Luke and KTM investors would not have dismissed the complaints of these investors.

    e. We did not encourage KTM investors to deal in securities solely with the object of enhancing his brokerage or commission. All the transactions and correct position of affairs was reported to KTM investors and they were fully aware that credit due to sale of options and pay-outs therefore were done as per their instructions as is evident from the findings of the IGRP as well as Arbitral Tribunal as extracted above.

27. *The submissions made above would clearly go to prove that we have been in compliance of all the provisions of Act, Rules, Regulations issued by Government, SEBI and Stock Exchanges as applicable to Stock Brokers. Hence the stand of SEBI with respect to the allegations of PMS/ Unauthorized Trading / Unfair Trade Practices etc. which were made basis the allegations contained in the complaint of KTM investors and Mr. Luke which is not supported by any evidence ought to be dismissed in limine.*
28. *Apart from the above we wish to draw attention to the following salient points with respect to allegations contained in Annexure FI and FVI for your kind consideration:*
    i)Clause B of the Code of Conduct for Stock Brokers read with Regulation 9 of Securities and Exchange Board of India (Stock-Brokers and Sub-Brokers) Regulations, 1992 which quote as under:

    "(4) Business and Commission:

    (a) A stock-broker shall not encourage sales or purchases of securities with the sole object of generating brokerage or commission.

    (b) A stock-broker shall not furnish false or misleading quotations or give any other false or misleading advice or information to the clients with a view of inducing him to do business in particular securities and enabling himself to earn brokerage or commission thereby."

    ii) The above two clauses clearly substantiate that other than the above two reasons, a stock broker may disseminate research recommendations to its clients and it is up to the client to transact based on such research recommendations. It is general market practice to provide research recommendations to clients. In case where the clients do not wish to transact based on research recommendations, no transactions were executed. It is not the case of SEBI or any client that any transaction was executed by us even though clients did not want to execute such transaction(s).
29. *We had sought all the requisite information from the clients about their own securities, financial situation, objectives of investment etc. The details of own securities were available in the form of their holdings and shares given to us as margins. The financial status of the clients substantiated them to be HNIs and they themselves signed up for trading in F&O segment thus clearly suggesting that it was one of the objectives of opening account with us.*
30. *As regards Mr. Alexander Luke, he is a highly educated IAS officer who held top positions in various companies. He had himself opted for trading in F&O segment. A background check of Mr. Luke shows that he is a self-proclaimed financial wizard. On his website he claims to be a turnaround man who has successfully turned around several loss-making PSUs with his financial acumen. Kindly refer website www.ethicalmanagementluke.in for further information. This substantiates that he had thorough understanding of financial markets and products he dealt with and that his complaint was an afterthought.*
31. *As regards KTM investors, both the NSE IGRP as well as the Hon'ble Arbitration Tribunal have categorically held that Mr. Kamlesh Mody was no "babe in the woods" but is a highly educated CA of more than 30 years' standing and is quite experienced in trading in securities market.*

32. *Further in case of KTM investors and Mr. Luke there are voice recordings and mail confirmations to substantiate that they have availed to our research recommendations and therefore the allegation that we have been carrying out PMS activities by making suggestions the clients to execute certain transactions is incorrect. Copies of the voice logs and mails confirmations of both KTM investors and Mr. Alexander Luke were filed with our earlier submissions and are once again filed herewith as Annexure 7 for convenience.*
33. *We wish to draw the attention of SEBI to the complaint of Mr. Alexander Luke forwarded by SEBI as a part of the current report wherein he quotes as under: "Every morning of trading, a dealer of ABML would phone me around 9 a.m. conveying a trade to be done and approval sought, particularly, mentioning that these suggestions originated from Mr. Thukral and following my telephonic approval, then send me a mail detailing the same (eg. Annexure 3.1) they would remind me to OK the suggested trade by return mail, only after which the transaction would be carried out".*
34. *As stated above the IGRP which examined the complaint of Mr. Alexander Luke dismissed it without admitting any claim. Mr. Luke also did not initiate any arbitration proceedings against the same. There are no complaints from any other clients with respect to transactions effected in Futures and Options segment from the terminals located at Mumbai. We had also furnished proof that the same recommendations were availed by multiple customers all over India and had shared the order log evidencing the same. At the time of issuance of the SCN, the Adjudicating Officer had taken the same into consideration and had dropped allegations contained in FI and FVI. In any case SEBI is estopped from taking up same issues and adjudicating it afresh on account of res judicata and issue estoppel as aforesaid.*
35. *As regards the allegations regarding providing profit and loss statements / estimated profit and loss statements, effecting monthly payouts etc. are akin to portfolio management services and delayed payment charges are levied in lieu of portfolio management fees are denied as false and non-maintainable.*

    a. We use leading back office software that is used by several other market participants. The format of reports (including profit and loss statements) generated from our back office software are the same as issued by several market participants who use this software. Issuance of profit and loss statements cannot be construed as providing portfolio management services. Above all SEBI has issued a format of Annual Global Transaction Statement which is similar to the profit and loss reports generated from our software.

    b. Profit and Loss statements were shared with KTM investors basis their request and certain statements were provided as per the methodology suggested by them. Both the IGRP as well as the Hon'ble Arbitration Tribunal have given a clear finding as extracted above that these documents were shared basis the request of KTM investors. The P&L statements referred in the SCN were made as per the directions of KTM investors. Similarly, Mr. Luke had also requested for calculations in a particular format. Copies of these communications are filed as Annexure 8. Providing additional statements apart from mandatory reports is not prohibited. These reports were provided for client convenience on their request and as per the method suggested by them from time to time and no fault can be found with issuance of such statements.

    c. Correct P&L statements based on all transactions were also submitted to KTM investors from time-to-time evidence for which is already on record. The difference between correct P&L statements and the P&L statements made as

per the method of KTM investors was also explained to them and after being satisfied with such explanation, KTM investors would accept the statements with remarks to the effect that the difference has been explained to them by affixing their signature below such remarks. We have given extensive submissions on these allegations vide our replies to Annexure FII, FIV and FV and have also filed supporting documents thereof. Copies of profit and loss statements duly confirmed by KTM investors filed as Annexure 10 to our reply dt. 30.092020 may be referred to. Profit and Loss statements duly confirmed by Mr. Luke are filed herewith as Annexure 9.

d. Payments can be made to clients as and when demanded and possible. These can be for various reasons inter alia including sale of securities in their account (whether at profits or losses), payment against credit balance in the account for various reasons including MTM credits, sale credit of option, release of margins, dividend credits etc. In case of KTM investors also the payments were made for several of the above reasons and not only against profits. None of the payments have ever been correlated to profits as wrongly alleged by SEBI. Reference may be made to Annexure 9 to our reply dt. 30.09.2020 wherein KTM investors have themselves sought payouts of Option Premiums. Moreover, no monthly payout was effected to Mr. Luke or other clients. As such it can never be contended that profit payouts were issued to clients. The very fact that each client followed a different approach with respect to their transactions/ reports etc. would clearly go to prove that they were dis-similar and no portfolio management services were accorded to them. These allegations were raised by investors during IGRP and Arbitration. The Learned IGRPs' and the Hon'ble Arbitration Panel members did not find any merits in these allegations.

e. Delayed payment / Late pay in charges were levied for KTM investors predominantly after they stopped trading through their accounts i.e. during the year 2016 as they failed to clear the debit balances that arose due to transactions effected by them. Even the table contained in Annexure FI clearly demonstrates the same. Mr Alexander Luke also failed to clear his debits in the year 2016 and as such delayed payment charges were levied. SEBI has conveniently ignored the fact that as a Broker we had to effect payments to Exchanges even if the clients do not clear their debit balances. Moreover, we incur financial charges on amounts that are borrowed to meet such payments to Exchanges. As such levy of delayed payment charges as per the terms and conditions agreed upon between Broker and Client, cannot be equated to portfolio management fee. We would like to put on record that clauses pertaining to delayed payment charges and late pay in charges (i.e. interest on uncleared debit balances of client) are part of the standard agreement executed by all our broking clients, which is also in line with industry practice. Mere inclusion of clauses pertaining to delayed payment charges or late pay in charges or charging the same does not amount to rendering Portfolio Management Services.

36. *It is incorrect to state that Mr. Hemant Thukral has traded in the accounts of KTM investors and that of Mr. Luke. No proof has been adduced to the effect that Mr. Hemant Thukral had traded in these accounts. On the contrary both the clients have confirmed in their complaint that the trades were executed only after their instructions, though the recommendations were made by Mr. Hemant Thukral. Mr. Luke has also gone ahead to confirm that till he did not accept the recommendations, we did not execute transactions.*

37. *Trades executed by Mr. Hemant Thukral in his own account were not contrary or opposite to that of KTM investors or Mr. Luke. He had transacted with same mindset as client's positions in different contracts of same underlying at different points in time. These trades in hindsight cannot be considered as conservative or aggressive. In fact, trades in Deep Out of the Money contracts are more conservative than At the Money or In the Money Options and it is SEBI's own case that clients traded in Deep Out of the Money option contracts too.*
38. *SEBI's reliance on Options Maxima order as well as other IGRP/ Arbitration Awards are unrelated to the charges in SCN or the inspection proceedings. In fact, Option Maxima related transactions took place in the year 2010 and we had denied all the allegations cast upon us by SEBI. The penalty of Rs. 10 lakhs imposed by SEBI was paid on a without prejudice basis. The same cannot be treated as an admission as further recourses were thoughtfully not taken to avoid hardships and burning hard earned money and the same cannot be a reason to draw conclusions in the current matter. As regards the other proceedings, it is submitted that they were not entirely decided against us. Just because the name of Hemant Thukral is referred in these proceedings, it cannot be construed that there are repeated violations and system controls were not in place. In factresearch recommendations were availed by various clients and only few clients have referred to the name of Mr. Hemant Thukral would not amount to lack of system controls.*
39. *There is not a single finding that all statutory documents that have been prescribed by SEBI have been incorrect or have not been served on KTM investors or Mr. Luke. SEBI is also disregarding all the profit and loss statements which have been duly acknowledged by KTM investors as well as Mr. Luke. SEBI is also not taking into account the confirmations given by KTM investors and Mr. Luke with respect to transactions effected by them despite no direct regulatory guideline in this regard and despite being legal as per Indian Contract Act, 1872. Further SEBI is not taking into consideration letters/ mails shared by KTM investors and Mr. Luke with respect to methodology for calculations / scenario analysis etc. SEBI has also disregarded the fact that payouts to the tune of Rs. 8,16,11,684 were taken out by KTM investors and there is not even a whisper of the same in the inspection report.*
40. *To sum up we would like to submit that:*

    a. Transactions were executed only with the consent of KTM investors and Mr. Luke.

    b. There is no bar in executing transactions from a single location.

    c. OAS tagging forms part of the software and the facility was extended only to help clients in tracking their options transactions. This tagging cannot result in concluding that the trades were in the nature of PMS.

    d. None of the trades were executed under PMS facility.

    e. Arbitrage returns pertains to purchase and sale of securities in one exchange or under different asset class i.e., cash to derivatives etc. as aforesaid.

    f. Providing profit and loss statements is purely related to broking operations and also stipulated by SEBI in the form of Annual Global Transaction Statement. The alleged incorrect P&L Statements were workings done as per the methodology suggested by client and this has been adjudicated by Learned IGRP's and Hon'ble Arbitral Tribunal members.

    g. We were providing research recommendations which are incidental to our broking services and not in violation of SEBI Regulations.

h. Variations in these two versions of P&L were clarified by us from time to time to the satisfaction of KTM investors and Mr. Luke and the confirmations were filed with SEBI in the form of documents as well as voice logs.

41. *As such we have not violated Regulation 2(1) (c), 3 (a), 3 (c), 3 (d), 4 (1), 4 (2) (f), 4 (2) (l), 4 (2) (m), 4 (2) (o) and 4 (2) (p) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003, Regulations 4.6.1, 4.6.2 (2), 4.6.2(3), 4.4.4 of NSE (Futures and Options Segment) Trading Regulations read with Clause (A) (5), Clause (A) (1), (A) (2) and (B) (4) (b) of Code of Conduct mentioned in Schedule II of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.*
42. *We further submit that all the requisite systems and internal controls are in place and the business is carried out with due skill, care and diligence failing which we would not have been able to gain the trust of more than 3.5 lakhs customers. Since all our activities are in compliance with the regulations of SEBI, we have not violated section 12 of SEBI Act.*
43. *Further we have not indulged in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains and have therefore not violated Clause A(3) of the Code of Conduct of Brokers Regulation.*
44. *Even further since all our acts are in compliance with all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange we have not violated Clause A(5) and B(7) of the Code of Conduct of Broker Regulations.*
45. *Finally, since our relationship with the clients is not under PM Regulations, the allegation of violating Regulation 14, Clause (A) (1) and (A) (2) of Code of Conduct of schedule II read with Regulation 9 SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 does not arise as alleged or otherwise.*

13. Vide email dated May 28, 2021, the Noticee was advised to submit complete reply in view of the SCN, Supplementary SCN and clarification email dated May 05, 2021. Subsequently, vide email dated June 11, 2021 Noticee was granted final opportunity to submit its reply on or before June 21, 2021, and it was communicated that no further extension shall be granted. Vide email dated June 21, 2021, Noticee requested for extension of one week of time to submit its reply. In this regard, vide email dated June 21, 2021, Noticee was granted time till June 28, 2021 to submit its reply to the SCN and an opportunity of hearing on July 14, 2021. Vide letter dated June 28, 2021, Noticee submitted its reply and the main contentions made therein are summarized as below -

    1. *Without prejudice, we repeat and reiterate the submissions made vide our letters dated September 30, 2020 and May 24, 2021 with regard to issuance of the SSCN being in violation of principles of natural justice, estoppel and res judicata.*
    2. *As the annexures tp the SSCN run into hundreds of pages along with its annexures and are merely a copy of the inspection report, the reply submitted by us in response to the inspection report dated July 12, 2019 alongwith*

Annexures thereto may be treated to have been reiterated and may be treated as part and parcel of this reply.

3. *We once again submit that the SSCN and the Annexures thereto do not make any fresh charge against us, but merely supply annexures with correlations to paragraph in SCN dated February 14, 2020. We submit that the charge is to be made out in the SCN and the relevant observations quoted in the SCN dated February 14, 2020 have already been dealt with in the submissions dated July 05, 2020, July 25, 2020. In the absence of any reference of relevant charges in the SCN, any reliance on the Annexures to the SSCN to determine the charges framed under the SCN is compieteiy misplaced. Accordingly, it is submitted that the scope of the instant proceedings ought to be restricted to the allegations contained in the SCN and charges framed thereunder.*
4. *It is reiterated that the annexures to the SSCN are nothing, but the findings and observations as recorded in the Inspection Report to which a detailed and satisfactory response had been filed by the Noticee vide its letter dated July 12, 2019. Despite having filed a satisfactory response, on the basis of which the Ld. Adjudicating Officer deemed it appropriate to drop certain charges against the Noticee at the time of issuance of the SCN itself, SEBI is now attempting to reagitate settled issued by way of the SSCN. Such an approach has set the clock back by 2 years to the utter detriment of the Noticee. SEBI's repeated insistence on the Noticee to file a response to the contents of the SSCN Annexures, despite detailed replies having already been filed goes to show that the contents of the Noticee's replies have not been considered and the instant proceedings are being conducted in a predetermined manner.*
5. *Noticee has relied upon the judgement dt. October 7, 2016 in J.A. Motor Sport vs. The State of Tamil Nadu & others.*
6. *Furthermore, in Apex Fiuidomatics Limited vs. CCB, Ahmedabad 2014 {3113} ELT 106 (Tribunal-Ahmedabad) it was held that any infirmity in the SCN cannot be bridged by adjudication proceedings. Accordingly, it is once again submitted that the allegations from the Inspection Report prepared by SEBI, which were not included in the SCN and have been deemed to be dropped by the former AO, cannot now be included by way of supplementary show cause notice. Anything to the contrary would amount to violation of principles of natural justice and would be against principles of fairness in quasi-judicial proceedings.*
7. *Without prejudice to our contentions, even though we are not completely clear as to what further submissions are required to be made in the matter, we are attempting to once again respond to the allegations contained in Annexures Fii,*
8. *FIV and FV of the SSCN, which have been marked and annexed hereunder. These submissions ought to be read in addition to our replies dated July 12, 2019, July 05, 2020, Juiy 25, 2020, September 30, 2020, December 29, 2020 and May 24, 2021.*
9. ***Response to allegations contained in Annexure FII. FIV and FV with respect to clients other than KTM investors:***

   1- Clause A.1.3: As clearly detailed in our replies dated Juiy 05, 2020, July 25, 2020, September 30, 2020, December 29, 2020 and May 24, 2021 to SCN ai well as the SSCN we would like to submit that payouts can be effected due to various reasons and is not related to generation of profits or otherwise. Payments can be made to clients as and when demanded and possible. These can be for various reasons inter aiia including sale of securities in their account (whether at profits or losses), payment against credit balance in the account for various reasons including MTM credits, sale credit of option, release of margins,

dividend credits etc. While issuing the pay-out we have always ensured that adequate margins are maintained even after such release of pay-out. Mr. Alexander Luke (Mr. Luke) had requested a payout and based on the risk coverage and margin availability, payout of Rs.2.91 lakhs on 17,08.2016 was effected. Without prejudice to the submission aforesaid, it is submitted that Mr. Luke had preferred to file a complaint with SEBi, wherein the same contention of Mr. Luke was adjudicated by 3 iGRP members and the complaint was dismissed without admission of any claim. Post the IGRP order Mr. Luke has not preferred to file any Arbitration case and thus the accepted position is that the said pay-out was not in the form of a profit pay-out as alleged, it is reiterated that SEBI is estopped from raking up same issues through different proceeding when the IGRP members have dismissed the complaint which has been accepted by Mr. Luke.

2.Similarly, Mr. Kumar Oza had received credit worth Rs. 13.20 lakhs on 26.11.2015 on account of derivative option transactions effected by him on 24.11.2015, 25.11.2015 being a settlement holiday and only a payout of Rs. 37,000 was released. Statement of accounts of Mr. Kumar Oza is filed herewith as Annexure 1. As such the allegation that client has been issued with a "profit" payout when the account was in debit cannot be sustained. Further it is not even the contention of the client that this was a profit pay-out and that he has ever been misguided. SEBI has preferred to bring up an allegation that it was a profit-pay-out out of thin air, whereas the fact remains that the client himself never claimed it to be profit pay-out.

3.Clause A.2.9: As detailed in our earlier replies we would like to submit that it is incorrect to state that we have submitted the Profit and Loss statement of Mr. Luke only for the period April 2015 - December 2015. We would like to submit that we have submitted the following profit and loss statements which are duly acknowledged by Mr. Luke from time to time:

Name of Investor	***Type of Statement***	***Period of P & L***
Alexander Luke	*Profit and Loss (Options Closing)*	*27.03.2014 – 31.03.2015*
Alexander Luke	*Profit and Loss (Options Closing)*	*27.03.2015 - 1.06.2015*
Alexander Luke	*Profit and Loss (Options Closing)*	*27.03.2015 - 27.08.2015*
Alexander Luke	*Profit and Loss (Options Closing)*	*27.03.2015 - 31.12.2015*
Alexander Luke	*Profit and Loss (Options Closing)*	*27.03.2015 - 28.01.2016*
Alexander Luke	*Profit and Loss (Options Closing)*	*27.03.2015 - 25.02.2016*

4. Further the profit and loss statements would be printed and sent by post to Mr. Luke who wouid verify the same with the transactions effected by him, would confirm the same by affixing his signatures and would send back the same to us through post. This was done at various intervals and covers the entire financial years of 2014 - 2015 and 2015 - 2016 when Mr. Luke sustained losses. As such these statements cannot be simply brushed away by stating that few statements specific to certain periods were submitted. It encompasses entire transactions effected by Mr. Luke during the said period in which he sustained losses. Copies of these statements have been submitted vide Annexure 9 to our response dated May 24, 2021. Without prejudice to the submission aforesaid, it is submitted that Mr. Luke had preferred to file a complaint with SEBI, wherein the same contention of Mr. Luke was adjudicated by 3 IGRP members appointed by NSE and the complaint was dismissed without admission of any claim. Post the IGRP order Mr. Luke has not preferred to file an Arbitration case and thus the accepted position is that the P&L

Statements singed by Mr. Luke were satisfactory and enforceable. It is reiterated that SEBI is estopped from raking up same issues through different proceeding when the IGRP members have dismissed the complaint that has been accepted by Mr. Luke.

5. Clause A.2.11: We would like to submit that estimated profit and ioss statements / scenarios as sought and advised by Mr. Luke were sent to him basis his request which is clearly confirmed in the subject line of some of the mails which clearly says "as seeked and advised by you". Further mail dt. 07.04.2016 sent to Mr. Luke by an employee of our company clearly highlights the fact that the scenario analysis / estimates profit and loss statements were shared with him basis his request. Extract of the same is given hereunder for your kind reference:

"Please note that I have sent you 13-14, 14-15 calculations as per your request, as discussed to phone to clearly differentiate I have kept actual PNL figures same under PNL, and how much difference wouid have come if we wouid have closed positions earlier in high loss months. Those figures are in right hand side column. Just to give you a picture or a scenario like thing, Also, daily sheets as M to M I have been clarifying you in post different mails like 24-02 also that are option prices taken for M to M will be different as they are based on excel sent you on your request with parameters which calculate ideal option pricing different from actuals which is more market driven"

This mail would also go to prove that Mr. Luke was made to understand the exact purpose of the scenario analysis mails / estimated P&L mails / P&L tables etc. to ensure that he was not misled. Copy of email is filed herewith as Annexure 2.

6. Further we would like to submit that SEBI has failed to consider the email dt. 31.03.2016 wherein the actual profit and loss statement was sent which atleast was 4 days before the mail dt. 05.04.2016 containing the profit and with scenario analysis was sent with scenario figures mentioned outside the table. This would also go to prove that the scenario analysis was sought for by Mr. Luke. The said mail dt. 31.03.2016 is filed herewith as Annexure 3.

7. P&L Statement shared through mail dt. 05.04.2014 reflects contracts with open positions whereas Client Global Net Outstanding (Options Closing) Arbitrage Position does not contain the records of open positions. As the contents of both these reports are different, the final figures of the report are bound to be different. A reconciliation thereof is given hereunder for your ready reference:

Particulars	Amount
Amount as per Client Global Net Outstanding (Options Closing) Arbitrage Position	-38,63,038.34
Value of open positions of FY 13-14 as in table below	9,27,112.50
TOTAL	-29,35,925.84
Profit / loss in Email dated April 5, 2014 (P&L)	-29,35,925.84

The detail of open position is given hereunder:

NIFTY 0 240414	5500	CO	24/04/2014	-36190
NIFTY 0 240414	6400	PO	24/04/2014	-440152.5
NIFTY 0 240414	6500	CO	24/04/2014	573267.5
NIFTY 0 240414	6700	PO	24/04/2014	1536750
NIFTY 0 240414	6800	CO	24/04/2014	-194025
NIFTY 0 240414	6900	CO	24/04/2014	-537305
NIFTY 0 240414	7000	CO	24/04/2014	24767.5
			TOTAL	927112.5

It can be observed that the profit and loss figures in Client Global Net Outstanding (Options Closing) Arbitrage Position excluding open positions value of Rs. 9,27,112.5 tallies with the loss figure of Rs. 29,35,925.84 given P&L statement shared through 05.04.2014 mail.

8. With regards to the observation that no explanation has been provided for the figures on the right side of the report in the email, we once again reiterace that these were scenario analysis given to Mr. Luke at his request. We are not aware as to how has SEBI come to a conclusion as to what illustrations have to be included in scenario analysis and which law warrants illustrations. Further the other conclusions that since the Profits / losses had already occurred our explanation seems implausible is merely a surmise. In fact every human being tries to keep learning from his past mistakes and tries to analyze as to what he could have done differently to get better results. We therefore submit that the analysis of SEBI that since the transactions had taken place there was no need to do a scenario analysis is incorrect. Further the most important aspect which is not appreciated or acknowledged by SEBI is the fact that the actual profit and loss figures alongwith the actual loss of Rs. 29,35,925.84 are reflected in the same mail {which is overlooked by SEBI) and the scenario is given outside the profit and loss table - which would clearly prove that it was only a scenario analysis and does not in any way mislead Mr. Luke as the actual profit and loss is also reflected. Without prejudice to the submission aforesaid, it is submitted that Mr. Luke had preferred to file a complaint with SEBI, wherein the same contention of Mr. Luke was adjudicated by 3 I6RP members appointed by NSE and the complaint was dismissed without admission of any claim. Post the IGRP order Mr. Luke has not preferred to file an Arbitration case and thus the accepted position is that the P&L Statements signed by Mr. Luke were satisfactory and enforceable and that the other statements were merely a scenario analysis. It is reiterated that SEBI is estopped from raking up same issues through different proceeding when the IGRP members have given a verdict that has been accepted by the client Mr. Luke.

9. Above all we have substantiated our contentions through various documents and even call records, but SEBI has tried to find fault with all of them on some unreasonable ground. Above all the acknowledged P&L statements of Mr. Luke have been completely ignored in spite of the same being on record. The same has been filed as Annexure 9 to our response dated May 24, 2021.

10. It is incorrect to state that Mr. Luke was misled to believe that he made profits. As stated in the foregoing paragraphs, Mr. Luke was also served with profit and loss statements on a regular basis and the same was duly acknowledged and confirmed by Mr. Luke. As such it is incorrect on part of SEBI to conclude that Mr. Luke was misled on profit and losses. Moreover Mr. Luke has never disputed the fact that he was shared with profit and loss statements, and he has never denied having confirmed them.

11. SEBI has wrongly alleged that the trades were carried out by ABML and only confirmations were obtained from Mr. Luke. We vehemently deny the allegation that trading decisions were taken by us and only post trade confirmation was obtained from Mr. Luke. In fact, in his complaint Mr. Luke has taken an exactly opposite stand. Mr. Luke at para 7 of his complaint dt. 30/09/2017, basis which had SEBI initiated our inspection, has stated that "Every morning of trading, a dealer of ABML would phone me around 9 AM conveying a trade to be done and approval sought, particularly, mentioning that these suggestions originated from Mr. Thukral and, following my telephonic

approval, then send me a mail detailing the same, (e.g., Annexure 3.1.) They would remind me to OK the suggested trade by return mail, only after which the transaction would be carried out. These would be followed later in the day; after the trade was executed, by a trade confirmation e.g., Annexure 3.2. Both 3.1 and 3.2 are samples and such mails were repeated every day. In fact the emails referred by Mr. Luke are annexed by SEBI itself in the SSCN Annexures but is still insisting upon us to keep repeating the same explanations. It is also incorrect on part of SEBI to state that only few voice logs were produced with respect to Mr. Luke's transactions. We have produced many voice logs which clearly would go to prove that Mr. Luke was not only placing orders but was discussing the transactions including the possible outcome of the investments at various levels of the Derivative Indexes. All the mailers exchanged with Mr. Luke also clearly confirm this fact. Hence this observation was rightly dropped from the SCN dated February 14, 2020 but has been sneaked in through SSCN in an inadmissible manner.

12.At this juncture, we find it imperative to reiterate that Mr. Luke had filed a complaint against us with NSE and the same was adjudicated by IGRP members appointed by NSE. After hearing both the sides at length, the IGRP members rejected the claim of Mr. Luke. Thereafter SEBI recommended Mr. Luke to pursue arbitration which he never did. The fact that Arbitration was never filed by Mr. Luke in spite of the advice of SEBI suggests that the IGRP order has attained finality and there is no reason for SEBI to re-investigate the matter basis the same contentions which have already been dismissed by the Hon'ble IGRP panel comprising of 3 learned and highly independent members.

13.As such we submit that we have not violated Regulation 2(1) (c), 3 (a), 3 (c), 3 (d), 4 (1), 4 (2) (f), 4 (2) (I), 4 (2) (m), 4 (2) (o) and 4 (2) (p) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003, Regulations 4.6.1, 4.6.2 (2), 4.6.2(3), 4.4.4 of NSE (Futures and Options Segment} Trading Regulations read with Clause (A) (5), Clause (A) (1), (A) (2) and (B) (4) (b) of Code of Conduct mentioned in Schedule fl of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992

14.<u>Clause b of Annexure IV</u>: SEBI had alleged that we have concealed losses from Mr. Luke to the tune of Rs. 51.85 lakhs in August 2015. Against this allegation we had filed call logs wherein the loss of 51.85 lakhs has been informed to Mr. Luke. As a result the allegation was rightly dropped from the SCN but for the reasons unknown, we are again being called upon to explain the same allegations which were thoughtfully dropped from the SCN after considering our replies. In fact the recording being referred here is supplied by SEBI itself along with the SSCN, but the same has not been considered for the reasons unknown.

15.<u>Clause c - Annexure IV:</u> As submitted above payouts were affected to for various reasons including profits, sale of shares, MTM, option premium credit, dividends earned on shares offered as margin etc. The pay-out of Rs. 50,000/- to Mr. Bhuptlal Sheth was on account of dividend received on shares of Reliance industries. This has got nothing to do with his positions which were covered with sufficient margins. Fresh positions in option contracts were allowed as there was adequate margin to allow such transactions. Further Mr. Bhupatial Sheth has never alleged that the payment was made to misguide him with regards to the profit and loss positon and in the absence of any such dispute with respect to the said payout, SEBI cannot ascribe ulterior motives to such payouts.

16. Annexure FV: SEBI has always preferred to discourage clients from using Broker's funds and has permitted brokers to charge Delayed Payment Charges (DPC) to clients where the clients do not make payments in a timely manner. In line with the circulars of SEBI and Exchanges we have preferred to discourage the clients from using our money and in case they end up using our money, we have charged them DPC so that they clear their dues at the earliest. This is the standard policy for all our 3.5 lakh clients and is not specific to Mr. Luke or other clients mentioned in Annexure FV to the SCN. The DPC was charged as per the extant guidelines of SEBI / Exchanges and cannot be found fault with.

17. As regards Late Payin Charges for F&O Exposure, we would like to also draw your kind attention to the margin collection process of NSE. As per NSE portal, atleast 50% of the effective deposits should be in the form of cash i.e. even if approved demat securities are deposited with the Exchange, atleast 50% value of the securities ought to be deposited in the form of cash. However, clients had predominantly provided securities to meet their margin requirements. Whenever there is a shortfall in cash margin component, we had to deposit our own money with the Exchange even if the same is not paid by the respective clients. As we are borrowing the funds and placing the same with Exchanges through Clearing Member, we charge interest on 20% cash component shortfall instead of 50% cash component shortfall of margins payable on futures and options positions. Snapshot of NSE website is attached herewith for your kind reference as Annexure 4. Even SEBI circular dt. 25.02.2020 states that cash to collateral ratio has to be maintained.

18. We wouid like to further submit that Delayed Payment Charges / Late Payin Charges were charged in accordance with the rate agreed upon with the client. As regards Table II charges we would like to submit that the charges were debited in accordance with the agreement executed by the client. In fact, whenever there is a shortfall in either margin or in case of debit, intimation is sent through SMS informing the client to clear the same. Failure to clear the debit will result in charging of Delayed Pay-in Charges / Late Pay-in Charges. SMS Log with respect to clearance of debit balances have been filed as Annexure 34 to our reply dt. 30.09.2020. Further all these charges are reflected in the statement of accounts of clients, and they have acknowledged and confirmed the transactions in the statement of accounts from time to time which would also go to prove that they are aware of the charges and the reason as to why those charges are levied, Copies of the Statement of Accounts acknowledged and confirmed by clients reflecting Delayed Pay-in Charges as well as Late Pay-in Charges were filed as Annexure 13 and as 35 respectively to our reply dt. 30.09.2020 to the SSCN.

19. In light of all the above submissions, we would like to submit that we are not in violation of Clause (B) (4) (a) and (b) of the Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and Regulation 4 2 (l) and (o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

We request you to grant us another opportunity of personal hearing in the matter to explain our position in the matter.

14. The hearing scheduled on July 14, 2021 was adjourned to July 20, 2021 at the request of the Noticee. Vide email dated July 19, 2021, Noticee requested for adjournment of the said hearing scheduled on July 20, 2021 on the ground that the authorized representative, Mr. Murali Krishnan L R was suspected Covid. In the hearing conducted through video conference mode using Webex platform, Ms. Gayathri S and Mr. Murali Krishnan L R appeared on behalf of Noticee and requested for adjournment. Accordingly, the hearing was scheduled for July 23, 2020, however vide email dated July 22, 2021 Noticee requested for adjournment to allow Mr. Murali Krishnan to recover and attend the hearing. Thereafter the hearing was scheduled on August 03, 2021. The hearing held on August 03, 2021 through videoconference was attended by the following authorized representatives (ARs) – Mr. Pradeep Sharma, Mr. Ravi Ramaiya, Ms. Gayathri Srinivasan and Mr. Murali Krishnan L R. The ARs reiterated the submissions made by the Noticee in its replies dated July 05, 2020, July 25, 2020, September 30, 2020, May 24, 2021 and June 28, 2021. The ARs requested time of one day to make post hearing submissions and the same was granted. Vide letter dated August 04, 2021, the Noticee submitted the arguments in brief (compilation of important observations of the inspection officials contained in Annexures FI, FII, FIV, FV&FVI and their oral submissions thereto) and stated the same to be considered as part of their earlier submissions.

CONSIDERATION OF ISSUES AND FINDINGS

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

a) **Whether Noticee has violated the following provisons –**

i. Regulation 14(1)(a) of SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as '**PM Regulations**').

ii. Clauses A (1), (2), (5) and B (7) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI (Stock-Broker) Regulations, 1992.

iii. SEBI Circular no. SEBI/HO/MIRSD /DOP1/CIR/P /2018/54 dated March 22, 2018

iv. Clauses (A)(1) and (A)(2) of Code of Conduct mentioned in Schedule II read with Regulation 9 SEBI (Stock Brokers) Regulations, 1992

v. Regulation 3(a) and Regulations 4(1), 4(2)(l), 4(2)(m), 4(2)(o) and 4(2)(p) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**').

vi. Clauses (A)(3), (A)(5) and B(4)(b) of Code of Conduct mentioned in Schedule II read with Regulation 9 SEBI (Stock Brokers) Regulations, 1992

vii. Regulations 3(a) and 4(1) of PFUTP Regulations.

viii. Clauses A (1), A (2) and A (5) of Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992

ix. Regulations 4(2)(l) and (o) of PFUTP Regulations.

x. Clauses (B)(4)(a) and (b) of the Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

xi. Clause 12e of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

xii. SEBI Circular ref no. CIR/MIRSD/66/2016 dated July 21, 2016.

xiii. Clause 4 of SEBI circular MRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006.

xiv. Point no 1.12 of SEBI Master Circular for Depositories SEBI/HO/MRD/DP/CIR/P/2016 /134 dated December 15, 2016.

xv. Clause 2 of SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993.

b) **Whether the Noticees are liable for monetary penalty under Sections 15HA and 15HB of the SEBI Act, 1992 and Section 23D of SCRA, 1956?**

c) **If so, what quantum of monetary penalty should be imposed on the Noticees?**

16. I have taken into consideration the material available on record and the submissions of the Noticees. Before moving forward, it is pertinent to refer to the provisions of law alleged to have been violated by the Noticee. The same are reproduced hereunder –

PM Regulations, 1993

14.Contract with clients and disclosures*. — (1) (a) The portfolio manager shall, before taking up an assignment of management of funds or portfolio of securities on behalf of a client, enter into an agreement in writing with such client clearly defining the inter se relationship, and setting out their mutual rights, liabilities and obligations relating to management of funds or portfolio of securities containing the details as specified in Schedule IV.*

SEBI (Stock Brokers) Regulations, 1992

Code of Conduct for Stock Brokers (Regulation 9)

A. General

(1) Integrity: A stock broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(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.

(3) Manipulation: A stock broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(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.

B. Duty to the Investor

(4) Business and Commission:

(a) A stock broker shall not encourage sales or purchases of securities with the sole object of generating brokerage or commission.

(b) A stock broker shall not furnish false or misleading quotations or give any other false or misleading advice or information to the clients with a view of inducing him to do business in particular securities and enabling himself to earn brokerage or commission thereby.

(7) Investment Advice: A stock broker shall not make a recommendation to any client who might be expected to rely thereon to acquire, dispose of, retain any securities unless he has reasonable grounds for believing that the recommendation is suitable for such a client upon the basis of the facts, if disclosed by such a client as to his own security holdings, financial situation and objectives of such investment.

Circular- SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018

Subject- Circular on Prevention of Unauthorised Trading by Stock Brokers

III.

To further strengthen regulatory provisions against unauthorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of:

a. Physical record written & signed by client,

b. Telephone recording,

c. Email from authorized email id,

d. Log for internet transactions,

e. Record of messages through mobile phones,

f. Any other legally verifiable record.

When a dispute arises, the broker shall produce the above mentioned records for the disputed trades. However, for exceptional cases such as technical failure etc. where broker fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt/payment of funds/securities by client in respect of disputed trade, etc. shall also be considered.

IV.

Further, wherever the order instructions are received from clients through the telephone, the stock broker shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records.

V.

The Brokers are required to maintain the records specified at Para III above for a minimum period for which the arbitration accepts investors' complaints as notified from time to time currently three years. However, in cases where dispute has been raised, such records shall be kept till final resolution of the dispute.

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

4. Prohibition of manipulative, fraudulent and unfair trade practices (from April 01, 2017 to January 31, 2019)

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

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

(l) an intermediary reporting trading transactions to his clients entered into on their behalf in an inflated manner in order to increase his commission and brokerage

(m) an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position;

(o) encouraging the clients by an intermediary to deal in securities solely with the object of enhancing his brokerage or commission;

(p) an intermediary predating or otherwise falsifying records such as contract notes

4. Prohibition of manipulative, fraudulent and unfair trade practices (February 01, 2019 onwards)

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

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following: —

(l) [omitted]

(m) a market participant entering into transactions on behalf of client without the knowledge of or instructions from client or mis-utilizing or diverting the funds or securities of the client held in fiduciary capacity

(o) fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income

(p) an intermediary predating or otherwise falsifying records including contract notes, client instructions, balance of securities statement, client account statements

Circular-MIRSD/SE/Cir-19/2009 dated December 3, 2009

Subject- Dealings between a client and a stock broker(trading members included)

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

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

Circular-CIR/MIRSD/66/2016 dated July 21, 2016

Subject-Operationalisation of Central KYC Records Registry (CKYCR)

1. Please refer to SEBI circulars no. CIR/MIRSD/16/2011 dated August 22, 2011, MIRSD/SE/Cir-21/2011 dated October 5, 2011 and CIR/MIRSD/13/2013 dated

December 26, 2013 on uniform Know Your Client (KYC) norms, prescribing a standard account opening form (AOF). AOF has been divided in 2 parts - Part I contains the basic KYC details of the investor used by all SEBI registered intermediaries.

2. *Government of India has authorized the Central Registry of Securitization and Asset Reconstruction and Security interest of India (CERSAI), set up under sub-section (1) of Section 20 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to act as, and to perform the functions of, the Central KYC Records Registry under the PML Rules 2005, including receiving, storing, safeguarding and retrieving the KYC records in digital form of a "client", as defined in Clause (ha) sub-section (1) of Section 2 of the Prevention of Money Laundering Act, 2002*
3. *As per the 2015 amendment to PML (Maintenance of Records) Rules, 2005 (the rules), every reporting entity shall capture the KYC information for sharing with the Central KYC Records Registry in the manner mentioned in the Rules, as per the KYC template for "individuals" finalised by CERSAI.*
4. *Accordingly, the KYC template finalised by CERSAI shall be used by the registeredintermediaries as Part I of AOF for individuals. The KYC template for "individuals" and the "Central KYC Registry Operating Guidelines 2016" for uploading KYC records on CKYCR finalised by CERSAI are enclosed herewith as Annexure 2 and Annexure 3 for your reference and necessary action. In this regard, it is clarified that the requirement for Permanent Account Number (PAN) would continue to be mandatory for completing the KYC process.*
5. *The 'live run' of the CKYCR has started with effect from July 15, 2016 in a phased manner beginning with new 'individual accounts'. Further, 'Test Environment' has also been made available by CERSAI for the use of the reporting entities.*
6. *In the first phase, the registered intermediaries shall upload the KYC data with CKYCR, in respect of all individual accounts opened on or after August 1, 2016, wherever KYC is required to be carried out as per the circulars issued by SEBI from time to time and accordingly, shall take steps to prepare their systems for uploading the KYC data.*

Circular-MIRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006

Subject-Exclusive e-mail ID for redressal of Investor Complaints

4. Accordingly, all the stock exchanges/registered brokers/registered sub-brokers/listed companies/depositories/registered depository participants are advised to designate an e-mail ID of the grievance redressal division/compliance officer exclusively for the purpose of registering complaints by investors. The above entities are also advised to display the email ID and other relevant details prominently on their websites and in the various materials/pamphlets/advertisement campaigns initiated by them for creating investor awareness.

Circular-SEBI/HO/MRD/DP/CIR/P/2016/134 dated December 15, 2016

Subject-Master Circular for Depositories

1.12 SMS alerts for demat accounts operated by Power of Attorney

Subscription to SMS Alert facility for depository accounts operated through Power of Attorney (POA) would be mandatory except in case of accounts held by non-individuals, foreign nationals, and NRIs.

Circular-SMD/SED/CIR/93/23321 on November 18, 1993

Subject-Regulation of Transactions Between Clients and Brokers

2. It shall be compulsory for all Member brokers to keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities. Such accounts for client's securities shall, inter-alia provide for the following: -

a) Securities received for sale or kept pending delivery in the market

b) Securities fully paid for, pending delivery to clients

c) Securities received for transfer or sent for transfer by the Member, in the name of client or his nominee(s)

d) Securities that are fully paid for and are held in custody by the Member as security/margin etc. Proper authorization from client for the same shall be obtained by Member

e) Fully paid for client's securities registered in the name of Member, if any, towards margin requirements etc.;

f) Securities given on Vyaj-badla. Member shall obtain authorization from clients for the same.

17. Before moving forward, I note that Noticee has raised the preliminary issue with regard to the issuance of the SSCN being in violation of principles of natural justice, estoppel and res judicata. The Noticee has contended that SSCN and the Annexures thereto do not make any fresh charges against them, but merely supply annexures with correlations to paragraph in SCN. The Noticee has contended that the scope of the instant adjudication proceedings ought to be restricted to the allegations contained in the SCN and the charges framed thereunder. The Noticee has stated that annexures to the SSCN are the findings and observations as recorded in the inspection report to which they had filed a detailed and satisfactory response vide its letter dated July 12, 2019 post inspection. The Noticee has contended that the erstwhile AO has deemed it fit to drop certain charges against the Noticee at the time of issuance of the SCN itself and that the allegations which were not included in the SCN and deemed to have been dropped by the AO cannot be included by SSCN. In this regard, I note that nowehere is it recorded that Noticee's post inspection reply were found to be satisfactory by SEBI and certain allegations were deemed fit to be be dropped. The Noticee is presuming so without any basis. Similarly, I also find the Noticee's contention that the AO while issuing SCN has accepted the Noticee's post inspection reply to SEBI and chosen not to include the allegation of the inspection into a charge in the SCN to be without merits. Further, I note that it was clarified to the Noticee that the entire annexures to the SSCN are relied upon and are relevant to the present proceedings. The annexures to the SSCN and the alleged violations along with provisions were also clarified to the Noticee viz. Unauthorized Trading and Portfolio Management Services (PMS) to Unregistered PMS Clients (Annexure FI), Misleading the clients

by understating losses and overstating profits (Annexure FII), Losses are covered by premium on sale of options and shown only at later stages (Annexure FIII), Delayed pay-in and late pay-in charges levied by Member (Annexure FV) and Lack of Adequate Systems and Internal Controls (Annexure FVI). Further, Noticee was granted opportunity to submit reply and hearing. Thus, I find no merit in the above contentions of the Noticee.

18. Further, the Noticee has contended that SEBI had conducted Special Inspection based on the complaints of KTM investors and Mr. Alexander Luke and had directed National Stock Exchange of India Limited (NSE) to get the complaints adjudicated by IGRP. Noticee has contended that both the IGRP and Arbitral panel of NSE have dismissed claims of KTM investors, and that IGRP examined the complaint made by Mr. Luke and dismissed his claim. Noticee has contended that the present proceedings under SCN and SSCN basis the same set of complaints is barred by the principle of issue estoppel and res judicata. In this regard, I note that IGRP proceedings cannot curtail SEBI's powers including initiation of adjudication proceedings for alleged violations of securities laws. Thus, I find no merits in the above contentions of the Noticee.

19. Having decided the preliminary issues raised by the Noticees, now I proceed to deal with the merits of the matter.

Issue a) **Whether Noticee has violated the provisons of PM Regulations, PFUTP Regulations, SEBI (Stock Brokers) Regulations, 1992, and SEBI circulars?**

A. <u>Carrying out Portfoli Management Services (PMS) activity for broking clients</u>

Findings based on Special Inspection (SI)

20. I note that Noticee is registered with SEBI as a Portfolio Manager also but clients mentioned in the below Table 1 were not registered with it as clients under their Portfolio Management Services but were only availing trading and depository services of the Noticee. However, it was observed that in the SOA of certain clients,

the term “Product-OAS” was used and interactions with these clients were through Wealth Management Division of ABML.

21. On seeking clarification of the term ‘Product’, ABML has submitted that they do not have any products. They have, inter-alia, stated as follows: *These are nothing but facilities provided to customers to track their investments. "Product" nomenclature was done only from an information technology perspective by the software vendor and not from a process perspective. We would like to submit that customers used these facilities to track their transactions effected in both cash as well as derivatives segment. No additional documents / agreement / communication / criteria is exchanged / executed with customers with respect to these facilities. No additional fee is charged to customers for availing these facilities. All customers trade in their individual capacity only and place orders through their respective dealers. No additional reports / documents are shared with customers who avail these facilities. Wealth Management Division belongs to Aditya Money Mart Limited which is a registered Authorised Person of Aditya Birla Money Limited. Aditya Birla Money Mart Limited is a referrer/ distributor of various financial products / services to its customers like Mutual Fund products / Broking services / PMS products / Bonds etc.”*. From above, it is noted that while Noticee has claimed that it was sending no additional reports / documents to customers, however I note that it was actually sending reports like profit and loss statements to its clients, as discussed in the subsequent parts of this order.

22. Trading was done by the Broker on behalf of their clients in these cases. The role of the Stock Broker is to execute the trades specified by their clients. They may provide investment advice which is incidental to their business. In the instant case, even if it is treated so, the same is not in compliance with Regulation 9 read with Code of Conduct prescribed in Clause (B) (7) of Schedule II in SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 and Regulation 4 (g) read with Regulation 15 (9) (read with Clause (1) and (2) of Code of Conduct specified in Third Schedule), Regulation 16 (a), 16(b) and 17 and 18 (1), 18(3), 18(6) and 18 (7) of SEBI

(Investment Advisors) Regulations, 2013, as, for example, Mr. Alexander Luke was a retired person and ABML has not done any risk profiling and suitability study before providing these recommendations for trading in options segment to the said client.

23. It is however observed that these services were not just the investment advices provided by the stock broker, which is incidental to their broking services. It was observed that under the strategy devised by the Noticee, all the decisions were taken by the Noticee. I note that it is alleged that the Noticee was carrying out PMS activity for unregistered PMS clients. The Noticee has *inter alia* denied the aforesaid allegation. The findings in regard to the said allegation are discussed as follows -

1. I note that all the trades of clients from KTM Investors and Mr. Luke were initiated and executed by ABML. In this regard, Noticee has contended that trades were initiated and executed by KTM investors and Mr. Luke and that there were no unauthorised trades. Noticee has also contended that the relationship between itself and the clients was that of broker and investor and that there was no PMS activity. In this regard I note that stock broking and PMS are distinct from each other. The relation between the broker and client is that of the agent and principal respectively wherein the broker executes the trades as ordered by the client, however in PMS the relationship is different. In the present case I note that the trades of clients from KTM Investors and Mr. Luke were initiated and executed by ABML. Further, Noticee has submitted that SEBI made it mandatory for brokers to maintain pre-order confirmation from April 1, 2018 and that though there was no prior regulatory requirement – they shared pre-order voice logs as well as emails of order instructions. Further, Noticee has submitted that the Stock Broking Regulations - Code of Conduct permit Broker to provide recommendations, hence Broker is exempted from Investment Adviser registration. In this regard, I note that on perusal of the authorizations of Noticee's clients in respect of trades executed on behalf of them viz. (i)

Emails sent by ABML, after execution of trades of KTM Investors, to Mr. Kamlesh Mody seeking his consent; and (ii) call records of conversations between ABML representatives and Mr. Luke for obtaining his consent after execution of the trades by ABML) (provided as Annexure C in Annexure X of the SSCN), I note that in most of the instances, trades were executed by ABML representatives and confirmations were obtained from the investors, post execution of the trades. Thus, I note that the client had a very passive role in the trades that happened in their account. As an example the following trade confirmations were sought by the Noticee from KTM investors –

a. Email dated May 23, 2014 from Noticee to Kamlesh Mody

"Dear Sir,

Kindly Confirm,

Account Id	Account Name	Exch g.Seg	Trading Symbol	Series/ Expiry	Instrument Name	Option Type	Strike Price	NetBuyQty	NetSellQty	NetQty	NetValue	BuyAvgPrice	SellAvgPrice
913103	LEENA KAMLESH MODY	NFO	NIFTY14MAY7300PE	29-May-14	OPTIDX	PE	7300		11150.00	-11150.00	375007.50		33.63
913103	LEENA KAMLESH MODY	NFO	NIFTY14MAY6000CE	29-May-14	OPTIDX	CE	6000	1350.00		1350.00	-183277.50	1357.57	
913103	LEENA KAMLESH MODY	NFO	NIFTY14MAY7200PE	29-May-14	OPTIDX	PE	7200	11150.00		11150.00	-142705.00	12.80	
913103	LEENA KAMLESH MODY	NFO	NIFTY14MAY7300CE	29-May-14	OPTIDX	CE	7300		1350.00	-1350.00	122325.00		90.61
913134	MITALI KAMLESH MODY	NFO	NIFTY14MAY7150PE	29-May-14	OPTIDX	PE	7150	7500.00		7500.00	-91420.00	12.19	
913134	MITALI KAMLESH MODY	NFO	NIFTY14MAY7100PE	29-May-14	OPTIDX	PE	7100	7500.00		7500.00	-53250.00	7.10	
913134	MITALI KAMLESH MODY	NFO	NIFTY14MAY7450CE	29-May-14	OPTIDX	CE	7450	7500.00		7500.00	-129375.00	17.25	
913134	MITALI KAMLESH MODY	NFO	NIFTY14MAY7200PE	29-May-14	OPTIDX	PE	7200		9000.00	-9000.00	113787.50		12.64
913134	MITALI KAMLESH MODY	NFO	NIFTY14MAY7500CE	29-May-14	OPTIDX	CE	7500		6000.00	-6000.00	108545.00		18.09
913093	SONALI KAMLESH MODY	NFO	NIFTY14MAY7250PE	29-May-14	OPTIDX	PE	7250	5000.00	12300.00	-7300.00	131220.00	18.15	18.05
913093	SONALI KAMLESH MODY	NFO	NIFTY14MAY7300PE	29-May-14	OPTIDX	PE	7300		2450.00	-2450.00	75460.00		30.80
913093	SONALI KAMLESH MODY	NFO	NIFTY14MAY7100PE	29-May-14	OPTIDX	PE	7100	9750.00		9750.00	-409100.00	4.20	

-

Thanks & Regards,

Snehal Prajapati
Wealth Management, Mumbai | Aditya Birla Money Ltd.,
Cello Triumph, Unit No. 401, I B Patel Rd, Off W.E Highway, Goregoan (E) , Mumbai 400 063."

Email Reply dated May 23, 2014 from Kamlesh Mody to Noticee –

"Ok"

b. Email 1 dated December 09, 2014 (04:41 PM) from Noticee to Kamlesh Mody

Account Id	Account Name	Exchg. Seg	Trading Symbol	Series/Expiry	Instrument Name	Option Type	Strike Price	Net Buy Qty	Net Sell Qty	Net Qty	NetValue	Buy AvgPrice	SellAvgPrice	Product Type	NetBuyValue	NetSellValue
91313 3	KAMLESH THAKORLAL MODY	NFO	NIFTY14DEC8550CE	24-Dec-14	OPTIDX	CE	8550.00		2100.00	-2100.00	475200.00		22.63	NRML		475200.00
91313 3	KAMLESH THAKORLAL MODY	NFO	NIFTY14DEC8700CE	24-Dec-14	OPTIDX	CE	8700.00	11025.00		11025.00	-98853.75	8.97		NRML	98853.75	
10022 71	KAMLESH THAKORLAL MODY HUF	NFO	NIFTY14DEC8250PE	24-Dec-14	OPTIDX	PE	8250.00		2675.00	-2675.00	67022.50		25.06	NRML		67022.50
91313 3	KAMLESH THAKORLAL MODY	NFO	NIFTY14DEC8600CE	24-Dec-14	OPTIDX	CE	8600.00	4200.00	8375.00	-4175.00	106246.25	15.80	20.61	NRML	66356.25	172602.50
10022 71	KAMLESH THAKORLAL MODY HUF	NFO	NIFTY14DEC8350PE	24-Dec-14	OPTIDX	PE	8350.00	1950.00	3875.00	-1925.00	26953.75	56.13	35.20	NRML	109447.50	136401.25
91313 3	KAMLESH THAKORLAL MODY	NFO	NIFTY14DEC8500CE	24-Dec-14	OPTIDX	CE	8500.00		2100.00	-2100.00	74557.50		35.50	NRML		74557.50
10022 71	KAMLESH THAKORLAL MODY HUF	NFO	NIFTY14DEC8700CE	24-Dec-14	OPTIDX	CE	8700.00	9150.00		9150.00	-89825.00	9.82		NRML	89825.00	
91313 3	KAMLESH THAKORLAL MODY	NFO	NIFTY14DEC8350PE	24-Dec-14	OPTIDX	PE	8350.00	3700.00	1250.00	2450.00	-179133.75	60.85	36.80	NRML	225133.75	460000.00
10022 71	KAMLESH THAKORLAL MODY HUF	NFO	NIFTY14DEC8600CE	24-Dec-14	OPTIDX	CE	8600.00	4200.00	7450.00	-3250.00	102522.50	17.10	23.40	NRML	71805.00	174327.50
91313 3	KAMLESH THAKORLAL MODY	NFO	NIFTY14DEC8300PE	24-Dec-14	OPTIDX	PE	8300.00		3100.00	-3100.00	112368.75		36.25	NRML		112368.75
10022 71	KAMLESH THAKORLAL MODY HUF	NFO	NIFTY14DEC8500CE	24-Dec-14	OPTIDX	CE	8500.00		2100.00	-2100.00	81723.75		38.92	NRML		81723.75
10022 71	KAMLESH THAKORLAL MODY HUF	NFO	NIFTY14DEC8400PE	24-Dec-14	OPTIDX	PE	8400.00	7750.00		7750.00	-397800.00	51.33		NRML	397800.00	
91313 3	KAMLESH THAKORLAL MODY	NFO	NIFTY14DEC8250PE	24-Dec-14	OPTIDX	PE	8250.00		4500.00	-4500.00	124658.75		27.70	NRML		124658.75
10022 71	KAMLESH THAKORLAL MODY HUF	NFO	NIFTY14DEC8300PE	24-Dec-14	OPTIDX	PE	8300.00		4850.00	-4850.00	134521.25		27.74	NRML		134521.25

913133	KAMLESH THAKORLAL MODY	NFO	NIFTY14DEC8400PE	24-Dec-14	OPTIDX	PE	8400.00	250	250	0.00	-1308	52.32		NRML	130805.00	
1002271	KAMLESH THAKORLAL MODY HUF	NFO	NIFTY14DEC8550CE	24-Dec-14	OPTIDX	CE	8550.00	210	210	0.00	-52742.50	25.12		NRML		52742.50
913103	LEENA KAMLESH MODY	NFO	NIFTY14DEC8300PE	24-Dec-14	OPTIDX	PE	8300.00	300	300	0.00	-78600.00	26.20		NRML		78600.00
913103	LEENA KAMLESH MODY	NFO	NIFTY14DEC8650CE	24-Dec-14	OPTIDX	CE	8650.00	450	450	0.00	-73863.75	16.41		NRML		73863.75
913103	LEENA KAMLESH MODY	NFO	NIFTY14DEC8600CE	24-Dec-14	OPTIDX	CE	8600.00	865	865	0.00	-192030.00	22.20		NRML		192030.00
913103	LEENA KAMLESH MODY	NFO	NIFTY14DEC8750CE	24-Dec-14	OPTIDX	CE	8750.00	875	875	0.00	-53528.75	6.12		NRML	53528.75	
913383	RANGRAJ INVESTMENTS PRIVATE	NFO	INFY14DEC2050CE	24-Dec-14	OPTSTK	CE	2050.00	100	100	0.00	-14650.00	14.65		NRML	14650.00	
913383	RANGRAJ INVESTMENTS PRIVATE	NFO	INFY14DEC2050PE	24-Dec-14	OPTSTK	PE	2050.00	600	600	0.00	-54050.00	90.08		NRML		54050.00
913383	RANGRAJ INVESTMENTS PRIVATE	NFO	INFY14DEC2100PE	24-Dec-14	OPTSTK	PE	2100.00	300	300	0.00	-39625.00	132.04		NRML	39625.00	
913383	RANGRAJ INVESTMENTS PRIVATE	NFO	INFY14DEC2350PE	24-Dec-14	OPTSTK	PE	2350.00	975	975	0.00	-36498862.50	374.34		NRML	36498862.50	
913383	RANGRAJ INVESTMENTS PRIVATE	NFO	INFY14DEC2100CE	24-Dec-14	OPTSTK	CE	2100.00	500	500	0.00	-39500.00	7.90		NRML	39500.00	
913383	RANGRAJ INVESTMENTS PRIVATE	NFO	INFY14DEC1900PE	24-Dec-14	OPTSTK	PE	1900.00	10000	10000.00		-144050.00	14.40		NRML	144050.00	
913134	MITALI KAMLESH MODY	NFO	NIFTY14DEC8300PE	41997	OPTIDX	PE	8300.00	180	180	0.00	-65465.00		36.37	NRML		65465.00
913134	MITALI KAMLESH MODY	NFO	NIFTY14DEC8600CE	41997	OPTIDX	CE	8600.00	330	660	0.00	-94946.25	16.36	22.57	NRML	53997.50	148943.75
913134	MITALI KAMLESH MODY	NFO	NIFTY14DEC8350PE	41997	OPTIDX	PE	8350.00	260	500.00		-134171.25	58.10	33.76	NRML	151050.00	168768.75
913134	MITALI KAMLESH MODY	NFO	NIFTY14DEC8400PE	41997	OPTIDX	PE	8400.00	100	100	0.00	-48848.75	48.85		NRML	48848.75	
913134	MITALI KAMLESH MODY	NFO	NIFTY14DEC8550CE	41997	OPTIDX	CE	8550.00	165	165	0.00	-39470.00		23.92	NRML		39470.00
913134	MITALI KAMLESH MODY	NFO	NIFTY14DEC8500CE	41997	OPTIDX	CE	8500.00	165	165	0.00	-61617.50		37.34	NRML		61617.50
913134	MITALI KAMLESH MODY	NFO	NIFTY14DEC8250PE	41997	OPTIDX	PE	8250.00	282	282	5.00	-74682.50		26.44	NRML		74682.50
913134	MITALI KAMLESH MODY	NFO	NIFTY14DEC8700CE	41997	OPTIDX	CE	8700.00	812	812	5.00	-73547.50	9.05		NRML	73547.50	
913093	SONALI KAMLESH MODY	NFO	NIFTY14DEC8400PE	41997	OPTIDX	PE	8400.00	100	100	0.00	-49802.50	49.80		NRML	49802.50	

913093	SONALI KAMLESH MODY	NFO	NIFTY14DEC8300PE	41997	OPTIDX	PE	8300.00		157	-1575.00	54877.50		34.84	NRML		54877.50
913093	SONALI KAMLESH MODY	NFO	NIFTY14DEC8500CE	41997	OPTIDX	CE	8500.00		165	-1650.00	63010.00		38.19	NRML		63010.00
913093	SONALI KAMLESH MODY	NFO	NIFTY14DEC8700CE	41997	OPTIDX	CE	8700.00	8125.00		8125.00	-73698.75	9.07		NRML	73698.75	
913093	SONALI KAMLESH MODY	NFO	NIFTY14DEC8550CE	41997	OPTIDX	CE	8550.00		165	-1650.00	41580.00		25.20	NRML		41580.00
913093	SONALI KAMLESH MODY	NFO	NIFTY14DEC8250PE	41997	OPTIDX	PE	8250.00		260	-2600.00	67395.00		25.92	NRML		67395.00
913093	SONALI KAMLESH MODY	NFO	NIFTY14DEC8350PE	41997	OPTIDX	PE	8350.00	2150.00	500.00	-1650.00	-103321.25	56.00	34.16	NRML	120400.00	170778.75
913093	SONALI KAMLESH MODY	NFO	NIFTY14DEC8600CE	41997	OPTIDX	CE	8600.00	3300.00	6600.00	-3300.00	91627.50	17.33	22.55	NRML	57187.50	148815.00

Thanks & Regards…
Tanvi Gandhi| Wealth Management, Mumbai | Aditya Birla Money |
Cello Triumph , Unit No. 401, I B Patel Road , Off W.E Highway , Goregoan East , Mumbai 400 063.
Tel no. 022-61207642.

Email 2 dated December 10, 2014 (10:09 AM) from Noticee to Kamlesh Mody

Kindly revert by sending ok thus confirming your trades.

Thanks & Regards…
Tanvi Gandhi| Wealth Management, Mumbai | Aditya Birla Money |
Cello Triumph , Unit No. 401, I B Patel Road , Off W.E Highway , Goregoan East , Mumbai 400 063.
Tel no. 022-61207642.

Email Reply dated December 10, 2014 from Kamlesh Mody to Noticee –

"Ok"

c. Email dated July 28, 2015 from Noticee to Kamlesh Mody

"Dear Sir,

Kindly revert "OK" thus confirming your trades,

Account Id	Account Name	Exch.Seg	Trading Symbol	Series/Expiry	Instrument Name	Option Type	Strike Price	NetBuyQty	NetSellQty	Net Qty	NetValue	BuyAvgPrice	SellAvgPrice
10022071	*KAMLESH THAKORLAL MODY HUF*	*NFO*	*NIFTY15AUG8000PE*	*42243*	*OPTIDX*	*PE*	*8000.00*		250.00	-250.00	8012.50		32.05

1002271	*KAMLESH THAKORLAL MODY HUF*	*NFO*	*NIFTY15AUG8400CE*	*42243*	*OPTIDX*	*CE*	*8400.00*	250.00		250.00	-39375.00	157.50	
1002271	*KAMLESH THAKORLAL MODY HUF*	*NFO*	*NIFTY15AUG8700CE*	*42243*	*OPTIDX*	*CE*	*8700.00*		750.00	-750.00	30937.50		41.25
913383	*RANGRAJ INVESTMENTS PRIVATE*	*NFO*	*NIFTY15JUL8600CE*	*42215*	*OPTIDX*	*CE*	*8600.00*	375.00		375.00	-618.75	1.65	
913383	*RANGRAJ INVESTMENTS PRIVATE*	*NFO*	*NIFTY15JUL8350PE*	*42215*	*OPTIDX*	*PE*	*8350.00*	*8000.00*		8000.00	-365987.50	45.75	
913383	*RANGRAJ INVESTMENTS PRIVATE*	*NFO*	*NIFTY15JUL8400CE*	*42215*	*OPTIDX*	*CE*	*8400.00*	*3750.00*		3750.00	-80250.00	21.40	
913134	*MITALI KAMLESH MODY*	*NFO*	*NIFTY15AUG8400CE*	*42243*	*OPTIDX*	*CE*	*8400.00*	*1500.00*		1500.00	-241930.00	161.29	
913134	*MITALI KAMLESH MODY*	*NFO*	*NIFTY15AUG8000PE*	*42243*	*OPTIDX*	*PE*	*8000.00*		1500.00	-1500.00	46600.00		31.07
913134	*MITALI KAMLESH MODY*	*NFO*	*NIFTY15AUG8700CE*	*42243*	*OPTIDX*	*CE*	*8700.00*		4500.00	-4500.00	191252.50		42.50
913133	*KAMLESH THAKORLAL MODY*	*NFO*	*NIFTY15AUG8400CE*	*42243*	*OPTIDX*	*CE*	*8400.00*	*1100.00*		1100.00	-168025.00	152.75	
913133	*KAMLESH THAKORLAL MODY*	*NFO*	*NIFTY15AUG8000PE*	*42243*	*OPTIDX*	*PE*	*8000.00*		1100.00	-1100.00	36130.00		32.85
913133	*KAMLESH THAKORLAL MODY*	*NFO*	*NIFTY15AUG8700CE*	*42243*	*OPTIDX*	*CE*	*8700.00*		3300.00	-3300.00	130375.00		39.51
913103	*LEENA KAMLESH MODY*	*NFO*	*NIFTY15AUG8000CE*	*42243*	*OPTIDX*	*CE*	*8000.00*		17400.00	-17400.00	763123.25		438.58
913103	*LEENA KAMLESH MODY*	*NFO*	*NIFTY15JUL7900CE*	*42215*	*OPTIDX*	*CE*	*7900.00*	*18375.00*		18375.00	-866737.50	471.69	
913103	*LEENA KAMLESH MODY*	*NFO*	*NIFTY15AUG8700CE*	*42243*	*OPTIDX*	*CE*	*8700.00*		13500.00	-13500.00	580382.50		42.99
913103	*LEENA KAMLESH MODY*	*NFO*	*NIFTY15AUG8000PE*	*42243*	*OPTIDX*	*PE*	*8000.00*		4500.00	-4500.00	137625.00		30.58
913103	*LEENA KAMLESH MODY*	*NFO*	*NIFTY15JUL8800PE*	*42215*	*OPTIDX*	*PE*	*8800.00*	*4350.00*		4350.00	-182762.50	420.14	
913103	*LEENA KAMLESH MODY*	*NFO*	*NIFTY15AUG9000PE*	*42243*	*OPTIDX*	*PE*	*9000.00*		17400.00	-17400.00	1002515625		576.16
913103	*LEENA KAMLESH MODY*	*NFO*	*NIFTY15AUG8400CE*	*42243*	*OPTIDX*	*CE*	*8400.00*	*4500.00*		4500.00	-726448.75	161.43	
913103	LEENA KAMLESH MODY	NFO	NIFTY15JUL9000PE	42215	OPTIDX	PE	9000.00	14025.00		14025.00	-876147.50	624.89	
913093	SONALI KAMLESH MODY	NFO	NIFTY15AUG8700CE	42243	OPTIDX	CE	8700.00		1650.00	-1650.00	68145.00		41.30
913093	SONALI KAMLESH MODY	NFO	NIFTY15AUG8000PE	42243	OPTIDX	PE	8000.00		550.00	-550.00	17600.00		32.00
913093	SONALI KAMLESH MODY	NFO	NIFTY15AUG8400CE	42243	OPTIDX	CE	8400.00	550.00		550.00	-86771.25	157.77	

Thanks & Regards,

Snehal Prajapati
COE Derivative Desk, Mumbai | Aditya Birla Money Ltd.,
Cello Triumph, Unit No. 401, I B Patel Rd, Off W.E Highway, Goregoan (E) ,
Mumbai 400 063

Email Reply dated July 29, 2015 from Kamlesh Mody to Noticee –
"Ok"

Similarly, I note from the call records dated 26-09-2013, 07-03-2014, 22-03-2014, 05-09-2014, 12-09-2014, etc between Noticee and Mr. Alexander Luke that trades were executed by the ABML representatives and confirmations were obtained from the client post execution of the trades. Such confirmations are more of a formality. As an example, the following trade confirmation were sought by the Noticee from Mr. Luke –
Call Transcript dated March 22, 2014 (Audio file named as "*P11 03-22-2014 12=34=18 41 Out 7642 08606006199 A340*")

ABML Employee – *Hello*

Mr. Luke – *Yes*

ABML Employee – *Sir your confirmation call dated yesterday*

Mr. Luke – *Yes*

ABML Employee – *Account No. 901034 Nifty March Series 54 39 50 sold at 19.83, 6200 calls 2450 bought at 322, 6350 calls 1500 bought at 171.15, 6500 calls 3950 sold at 56.33*

Mr. Luke – *Ok*

2. Further, I note that in one of the emails of ABML dated April 13, 2016 to Mr. Luke (as annexed by Mr. Luke in his complaint to SEBI) (provided as Annexure A – Page 90 in Annexure X to SSCN), it is observed that representatives of ABML (Dealer- Wealth Management) give recommendations of Research and seek his consent to place the orders and avail positions in his account on the basis of the said recommendation, as per the available Margin. It is further stated in the said email that "*in case our research department modify their recommendations during intraday, Can we modify the changes as per recommendation, please confirm*". I note that this kind of consent would allow the Stock Broker to trade at his discretion using client's funds and securities. This indicates, the consent of

the client was a mere formality and the trades were broker driven i.e. the decisions were taken by ABML and trades were placed accordingly, which is not in line with the normal trading relationship between the Broker and the client as claimed by the Noticee. Noticee has contended that the complaint of Mr. Luke records that trades were only done if he consented over phone as well as email, and Noticee has relied upon emails dated 21.07.2016 and 28.07.2016. In this regard, I note that the emails dated 21.07.2016 and 28.07.2016 submitted by the Noticee do not negate the observations made from the email dated April 13, 2016 of the Noticee. In a normal broking activity, a client instructs the broker regarding the trading of his shares. However, in the present case, it is observed that the trades emanated from the Noticee and were broker driven. The emails also evidence the same. Thus, I find no merit in the aforesaid contentions of the Noticee.

3. It is observed from email dated February 18, 2016 of Mr. Thukral to Mr. Luke, that his client ID is mapped against the Category - “managed trades”. (Email I in Annexure D in Annexure X of SSCN).

4. It is observed that with respect to a few clients, same recommendations were given / same strategy was followed in execution of trades by ABML, for example, the trades executed for few clients, namely Alexander Luke, Kamlesh Mody, Kamlesh Mody HUF, Leena Mody, Sonali Kamlesh Mody, Mitali Kamlesh Mody, Kumar Suresh Oza, Harshad Gordhandas Doctor, Nilesh Doctor etc in the month of April, 2015 and September, 2015 (given in Annexure E in Annexure X to the SSCN). From the same, it is observed that option contracts at the same strike price is taken for the same expiry periods, where only the quantity of the contracts bought /sold differ according to the balances available in the clients account. The same trades were carried out irrespective of the profile of the client including age, risk taking ability, financial status, trading history, etc. For example, Mr. Luke

was a senior citizen retired from service. However, there was no difference of the strategy observed wrt trades executed on his behalf and on behalf of KTM Investors, although some of the investors in KTM Investors, are younger in age as compared to Mr. Luke.

In this regard, Noticee has contended that client profiling means understanding the financial capability, risk taking ability, understanding of markets & past transactions, and that Mr. Mody & Mr. Luke had possessed all the above qualities. Further, Noticee has contended that the Risk Disclosure Document was also signed by all clients including KTM investors & Mr. Luke. Further, Noticee has submitted that Mr. Mody is a veteran CA with more than 30 years of experience and has good knowledge of securities market which has also been declared by IGRP & Arbitration Panel. Further, Noticee has submitted that Mr. Luke an Ex IAS officer and is a self proclaimed financial genius which is displayed on his own website (www.ethicalmanagementluke.in) where he claims to be the turnaround man who changed fortunes of several loss making PSU by making them profitable. In this regard, I note that the securities markets knowledge is unique. Therefore, I do not find merit in the contentions as argued by the Noticee. Noticee has submitted that the financial status of the clients substantiated them to be HNIs and they themselves signed up for trading in F&O segment thus clearly suggesting that it was one of the objectives of opening account with us. However, in this regard, I note that Mr. Luke in his complaint (Annexure A to Annexure X to SSCN) has stated that "*I made it clear to the representatives of ABML that I was not very familiar with trading in the Futures and Options stock market, my primary concern was the safety of my investments and I would be content with modest returns; and also unambiguously stated that my risk appetite was low and I would quit at the first sign of any cumulative loss.*". Thus, I find no merits in the above contentions of the Noticee. The ignorance of the client is further supported by the fact that the trades were initiated by the Noticee.

5. It was further observed that irrespective of the location of the clients, trades are executed from a single terminal id- Terminal No.26140 (as per the Derivative Transaction register provided by the Stock Broker and the information provided by NSE) and the said CTCL terminal situated at Cello Triumph, Unit No. 501-503, 505 & 401,I.B.Patel Road, Off W.E.Highway, Goregaon East, Mumbai. For example, the table given below on the location of few clients (in Product OAS) for whom the trades were executed through Terminal no. 26140 may be seen.

Table - 1

Client code	Client Name	Location
901034	Alexander Koipuram Luke	Kollam
	KTM Investors	Mumbai
30637	Vijay S P	Madurai
36253	Wilson Lawrence D Souza	Udipi
112009	Basi Reddy Bhaskar Reddy	Hyderabad
373073	Dharmeshkumar Prabhudas Patel	Anand, Gujarat
723140	Gurmeet Singh Marok	Jaipur
766368	Rayan Markkar Omar	Thrissur
791738	Anurag Gupta	Kanpur
915394	Sachin Jain	Ludhiyana
926485	Rishi Patney	Ambala
1025345	Harshad Gordhandas Doctor	Mumbai
1025605	Smita Snehal Sanghavi	Mumbai
1028411	Ajaykumar Jayantilal Patel	Navsari
911298	Gouri Arvind Kapoor	Mumbai
1026237	Shaikh Luqman Abdulsamad	Pune
1026215	Abdulsamad Sahebmiya Shaikh	Pune

In this regard, Noticee has contended that clients can choose to trade from any location and there are no regulatory restrictions. Further, Noticee has submitted that ICICI Securities / Upstox / Zerodha are examples and they also provide similar facility. Further, Noticee has submitted that trading terminal log evidencing clients placing orders from different locations was displayed where it could be observed that certain clients have traded both

from Mumbai as well as local offices as per their choice and convenience at the relevant time including the availability of dealer, their last conversation etc.

6. Normally, clients instruct the persons at the dealing desk of the Stock Broker for execution of trades, however, I note that with respect to Mr. Luke and KTM Investors, Mr. Hemant Thukral, Head of Technical Research and Derivatives, ABML directly dealt with them. In this regard, Noticee has submitted Mr. Hemant Thukral was an employee of the company and as such any client can connect with him to discuss his positions whether it was basis research recommendation or otherwise and seek clarifications. However, generally in a normal broking activity the broker merely acts on the instruction of the clients. As observed in the present case, Mr. Hemant Thukral directly dealt with the abovementioned clients, providing recommendations, interacting through emails, phone calls and sending customized statements, which indicates the services provided by ABML to these clients were much more than broking service. Further, Noticee has contended that the customized statements were sent only to clients who made specific requests. In this regard, I note that a broker is not required to send any customized reports as argued by the Noticee. The same also signals that it was not a mere broking activity.

7. Further, on examination of Statement of Accounts ("SOA") for a few clients for FY 2014-15 and 2015-16 (having Unique Client Code 901034, 1025547, 913103, 913134, 913133, 913093, 1002271, 1014213, 1030764, 1025345, 1030338, 1030445, 1025605, 1028411, 911298, 1026237, 1026215, 911246 and 914630), it is observed that they are categorized as "Product-OAS" in SOA and these clients are also marked as Product OAS in their Back office of ABML. There were around 326 clients who were categorized as "Product-OAS". (Sample SOA were given at Annexure-G in Annexure X to SSCN). Noticee has submitted that Product-OAS is only

appended to the entries of stock broking client ledgers for tracking transactions. However, I note that there is no explanation why the same is used for only a selective list of clients and not for others.

8. It is claimed by ABML that no additional reports / documents are shared with customers who avail the facilities –Product OAS. However, it is observed that ABML was providing 'Profit and Loss Statements 'to KTM Investors and Mr. Luke. A Stock Broker is not required to send a Profit and Loss Statement. It is stated by ABML that the Profit and Loss statements are provided to customers in the ordinary course of business and also based on the request of customers. It was stated by ABML that Mr. Kamlesh Mody sought Profit and Loss Statement through email dated June 07, 2016. However, it was observed that ABML has been providing 'Profit and Loss Statement' even before this date (emails at Annexure-H). It is further observed that all the profit and loss statements sent by ABML were not supported by clients' requests.

Apart from the above, it is observed that Mr. Hemant Thukral was even providing 'estimated Profits' in respect of contracts expiring every week for Mr. Alexander Luke (Emails dated 03/12/2015, 12/04/2016, 13/04/2016, 09/05/2016, 10/05/2016, 11/05/2016, 12/05/2016, 16/05/2016, 17/05/2016, 21/06/2016, 22/07/2016, 08/10/2016, 10/10/2016, etc.) providing Estimated Profit and Loss Account for contract yet to expire or sold.

In this regard, Noticee has submitted that Profit and loss statement is a standard report in their application software that can be accessed by all the 3.5 lakh customers and further they use a software that is widely used by many other brokers and all of them offer this facility to their clients. Further, Noticee has submitted that SEBI has only specified some mandatory reports to be provided to clients and has nowhere prohibited providing additional reports. Further, Noticee has contended that NSE circular directs

Brokers to provide Annual Global Transaction Statement which is akin to P&L. Further, Noticee has contended that sending profit and loss statements makes the client aware of the status of their investments and increases transparency. Further, the Noticee has contended that these clients received P&L for each year and still continued to transact for several years which shows that the trading was done at their own volition and not otherwise. In this regard, I note that the Annual Global Transaction Statement as per NSE's circular dated January 11, 2018 came into existence after the date of impugned transactions carried out on behalf of the aforementioned investors. Thus, I note the argument to be an afterthought by the Noticee.

In this context, I also note from the inspection report that the role of a stock broker is to execute the trades as directed by the clients and it is not required to send profit and loss statements to the broker. Being so, sending of such estimated Profit and Loss Accounts may be done by ABML to give hope to the clients regarding their future profits and would have led them to provide consent to ABML for the executed trades.

9. It is noted that an email was sent from Mr. Hemant Thukral dated 23/12/2014 and another from Mr. Vishal Muni (Dealer – Wealth Management, ABML) dated 09/01/2015 to Mr. Kamlesh Mody providing "Mody family Profits & Pay-outs for FY 2014 – 2015" and "Profit Payout in Rangraj Till date details" respectively-i.e. Profit payouts made from April 2014 to December 2014 for KTM Investors. It contains column for Deposit Returned, Family Profits, Adjusted Credit amount for Rangraj & Leena Mody, Net Gross amount till November 2014 and total payout done and Net buffer (given as Annexure D in Annexure X to the SSCN).

Further, Mr. Hemant Thukral had provided hard copy of the documents claiming to be Profit Arms Docs (Annexure-J in Annexure x to the SSCN)

on 29/05/2015 and 01/01/2016 to Mr. Kamlesh Mody (representing KTM Investors). In these Profit Arm Docs, the figures concerning profit "payout given" to KTM Investors for FY 2014-15 and 2015-16 were given. Further, the terms- "Arbitrage Fund Return", "Deposit Returned", "Loss entry 64 Lakhs", "Family Profits" "Net Gross Amount" "Payout done" and "Net Buffer" were used among other things. Mr. Hemant Thukral has also stated in Hard Copy in writing that "No Roll over Losses considered, Booked arms profits" and "I have explained all are book profit arms, no -roll over considered". However, it may be noted that no such statement that no Roll Over Losses considered was appearing in the abovementioned emails dated 23/12/2014 and 09/01/2015, which is misleading.

On examination of the Statements of Accounts provided by ABML to these clients, it is observed that certain payouts were made on monthly basis and the amount paid exactly tallied with the month-wise profit payouts mentioned in the Profit Arms Statements provided through emails and hard copy, as mentioned above. The same is tabulated in the table below (Column C). This indicates that, as alleged by the clients, Mr. Hemant Thukral had promised profit payouts to the clients at the end of every expiry period from 2014-15 and 2015-16. The terms "Arbitrage Fund Return" and "Deposit Returned", indicates that ABML was not only providing broking services, but managing the funds and securities on behalf of these clients.

Table - 2

Name of the Investor (A)	Date of Payout made (B)	Pay-out made as per SOA and Profit Pay-out as per Profit Arm Document emailed and provided by Mr.Hemant Thukral (C)	Expiry date (D)	Loss (excluding Delayed payment charges and late pay-in charges etc.) as per Client Global Net Outstanding (Options Closing) Arbitrage Position of ABML (E)
Kamlesh Mody	16/04/2014	2,25,000.00	27/03/2014	-14,60,015.00
Kamlesh Mody	30/12/2014	7,00,000.00	24/12/2014	-38,91,705.75

Kamlesh Mody	16/03/2015	3,50,000.00	26/02/2015	-1,56,096.25
Kamlesh Mody	23/10/2015	5,10,000.00	24/09/2015	-28,68,451.00
Kamlesh Mody HUF	16/03/2015	3,20,000.00	26/02/2015	-1,80,872.50
Kamlesh Mody HUF	21/05/2015	5,50,000.00	30/04/2015	-6,79,084.81
Kamlesh Mody HUF	23/10/2015	1,45,000.00	24/09/2015	-9,91,939.00
Leena Mody	09/09/2014	1,48,000.00	28/08/2014	-5,32,760.00
Leena Mody	02/12/2014	8,90,000.00	27/11/2014	-2,51,223.75
Leena Mody	30/12/2014	7,50,000.00	24/12/2014	-70,03,809.00
Leena Mody	15/01/2015	5,50,000.00	29/01/2015	-1,53,13,096.30
Leena Mody	21/05/2015	32,00,000.00	30/04/2015	-51,83,326.11
Leena Mody	23/10/2015	11,05,000.00	24/09/2015	-1,15,64,730.50
Mitali Kamlesh Mody	16/04/2014	55,000.00	27/03/2014	-13,52,440.90
Mitali Kamlesh Mody	06/01/2015	2,10,000.00	24/12/2014	-25,20,737.00
Mitali Kamlesh Mody	16/03/2015	3,50,000.00	26/02/2015	-2,20,692.50
Rangaraj Investment	02/12/2014	13,20,000.00	27/11/2014	-10,09,708.75
Rangaraj Investment	31/12/2015	35,00,000	31/12/2015	-16,98,307.50
Sonali Kamlesh Mody	16/04/2014	1,75,000.00	27/03/2014	-10,45,061.00
Sonali Kamlesh Mody	06/01/2015	1,90,000.00	24/12/2014	-29,91,823.25
Sonali Kamlesh Mody	16/03/2015	3,20,000.00	26/02/2015	-8,04,416.25

In this regard, Noticee has contended that statements were sent as per methodology suggested by KTM investors and letter content and mail content of Mr. Mody establishes this fact. Further Noticee has submitted that estimated P&L sent as per request of Mr. Luke for historical transactions and not for future possibilities as alleged in the Annexure to SCN and email sent to Mr. Luke and voice loggers proving this fact have been submitted. Further, Noticee has contended that no profit payouts were issued at the end of expiry and that pay-outs can be for multiple reasons including option sale credit, dividend, sale proceeds of shares, release of margins etc. Further, Noticee has submitted that KTM investors failed to prove any fraudulent transactions as per the findings of IGRP and Arbitration Panel. In this regard, I note that the broker is not expected to send any customized report to its clients the way that has been strangely argued by the Noticees. Though the client might have demanded certain statements in a specific fashion and design however, it is not obligatory on

a stock broker simpliciter to accommodate such request unless it is warranted by law. By the above conduct the Noticee stands to prove again that its relationship with the clients are just not that of a broker and a client and it is something beyond that. For the above reasons I tend to disagree with the arguments advanced by the Noticee taking shelter under the garb of client approvals or authorizations.

10. Further, following are observed on perusal of emails provided as Annexure D in Annexure X of SSCN –

a. In one of the email dated March 10, 2015 of Hemant Thukral to Mr. Kamlesh Mody, it is stated that "*Could not get why confidence in accounts is lost, 67 Lakhs was current year, 30 lakhs is entry rolled; already 3 lakhs profit in March one round booked Profit is showing 1.01 Cr.*".

b. Vide email dated February 4, 2015, payouts made by ABML to KTM Investors were communicated by ABML. Mr. Kamlesh Mody replies stating, '*what is the return on investment on arbitrage business*' and also seeks clarification wrt payouts made to the investors in KTM Group. The same is replied vide email dated 04/02/2015 by Mr. Vishal Muni of ABML clarifying "*in Leena Mody profit is Rs. 12500 on sum of Rs. 1000000/- (1.25%) In kamlesh HUF profit is Rs. 5700 on sum of Rs. 500000/- (1.14%)*".

c. Mr. Hemant Thukral of ABML vide email dated 27/06/2014 states to Mr. Kamlesh Mody that payout made to accounts of Ms. Mitali Mody, Ms. Sonali Mody and Mr. Kamlesh Mody is Rs.4.5 Lakhs each and further states these are only profit figures.

In case of normal broker and client relationships, there was no need for the stock broker to state that profits were booked. The content of these emails indicates that the funds and securities were managed by ABML on behalf of these clients. Hence, I note that the conduct of the Noticee

suggests the nature and type of activities/services rendered to the investors in question cannot be just be a mere broking service / activity.

11. Normally, for taking fresh positions, Broker requests for pay-ins by their clients. However, wrt Mr. Luke and KTM Investors, it is observed that only in a very few instances, pay-ins were made by the clients, most of the instances the Noticee was managing the trades with the initial pay-ins and security brought in by the clients as collateral. Even when the client's SOA is showing debit balances or when NSE was charging penalty for Margin Shortfall, the Noticee, without seeking pay-ins from the clients (instances are detailed in Annexure FIV and FV of SSCN), was managing the trades and was taking fresh positions. In this regard, Noticee has contended that SEBI Regulations do not warrant that fresh payin has to be taken for fresh position. Further, Noticee has contended that Clients had sufficient margins when positions were taken. In this regard, I note that if there was sufficient margin then there was no need for imposing of penalty by NSE for margin shortfall.

12. Mr. Alexander Luke had stated in his complaint that Mr. Hemant Thukral persistently followed up with him when he was abroad that he should sell his shares and buy Futures in those stocks and mentioned those instances in his complaint. It is noted that in the said instance, calls were made to the client seeking his prior consent, instead of obtaining his consent post execution, because of the fact that this transaction not only involved dealing in derivatives segment on his behalf, but also for selling of his shares. When the client was abroad and stated so, the reason and urgency for the Stock Broker for persistently contacting him and seeking to execute a transaction is questionable, especially when the broker had collaterals given by the clients. In normal course, if there is a failure on the part of the clients to bring in necessary pay-ins, Broker can refuse to allow additional positions, without further pay-ins by the client and may

sell the collateral to realize the money due, after intimation. However, in the present case the Noticee has not done so.

13. In the instant case, since the broker has classified clients as broking clients, they had managed to execute trades by leveraging the portfolio of the clients in respect of investment in derivatives even when clients do not have sufficient balances to take fresh positions. Further, it was also seen that on those occasions, Delayed Payments and Late Payment Charges were charged. The total Delayed (payment/payin) and Late Charges charged from the said clients' Financial Year wise is as follows -

Year	Delayed Payment and Late Pay-in Charges (in Rs.)	
	Aggregate for KTM Investors	Mr.Luke
2014-15	14,03,162.81	3,42,971.21
2015-16	1,28,65,859.41	10,83,687.07
2016-17	44,40,273.60	4,90,049.71

Thus, by initiating trades on behalf of the client continuously without obtaining their prior consent, the stock broker has earned substantial sum in the forms of Delayed payments and Late Payment Charges.

Noticee has contended that transactions were done under Broking regulations - IGRP orders and Arbitration awards are very clear in this aspect. Noticee has contended that delayed payment charges were charged against unpaid debit balances and as per agreed terms. In this regard, I note that the debit balances have arisen due to continuous trades by the broker.

24. All the aforesaid findings above like execution of trades without prior permission and at single location, following same strategy for clients, usage of terms such as "Product OAS", "managed trades", "arbitrage return", providing additional

statements like P&L, estimated P&L etc., indicate that these clients were not merely provided broking services or investment advices by ABML, which are incidental to broking activity. From the above, I note that ABML has done Portfolio Management Services for these clients without entering into any agreement.

25. As per Regulation 14(1)(a) of PM Regulations, a portfolio manager should enter into an agreement with the client before taking up management of a portfolio of securities on its behalf, which was not done by Noticee. As per Clauses A (1), (2), (5) and B (7) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI (Stock-Broker) Regulations, 1992, a registered stock broker should maintain high standards of integrity, exercise due skill and care, comply with statutory requirements and should not make investment advice to client in ordinary circumstances, which was not followed by Noticee. Thus, I find that the Noticee has violated the provisions of Regulation 14(1)(a) of PM Regulations and Clauses A (1), (2), (5) and B (7) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI (Stock-Broker) Regulations, 1992.

Findings based on Joint Inspection (JI)

26. During inspection, SEBI provided three samples of 84 clients and 184 trades to the Noticee and sought evidence for order placement/trade confirmation. Upon analyzing emails and call recordings, it was observed that clients had just confirmed the recommendations of the Noticee and clients had not initiated the said trades. I note that the clients were passively involved in the decision making. It is noted that Noticee executed the trades in the client's accounts and later informed the clients about the same. It was alleged that Noticee had managed the trading accounts of clients and given Portfolio Management Services (in short **PMS**) to clients without entering into PMS agreement with these clients, which were otherwise categorized as retail clients.

27. In this regard, Noticee has contended that Regulation 4(g) of SEBI (Investment Advisers) Regulations, 2013 exempts stock brokers and sub-brokers from

registering as Investment Advisors, and therefore all trades carried out by clients, whether out of their own research or as per the recommendations of the brokers are all valid trades of the clients and cannot be categorised as trades executed under a portfolio management arrangement. In this regard, I note that trades were executed by the Noticee and confirmation were obtained from the investors, post execution of the trades. Further, the Noticee has contended that they were carrying out transactions as desired by clients i.e. executing orders as specified by their clients. Further, the Noticee has submitted that almost all leading market participants publicize their services of giving research recommendations and has enclosed the flyers, website extracts, and brochures of leading brokers. I note that research recommendations are for all clients and are disseminated accordingly. All clients have access to the research reports. However, in the present case, the orders are designed for the specific clients and not for others. The same shows that what the broker was doing was something beyond research. Thus, I note that the client had a very passive role in the trades that happened in their account. As an example, the following trade confirmations were sought by the Noticee from clients post which clients confirmed the trades.

1. Email dated August 14, 2017 from Noticee to client code 1067121

"Dear Sir,

Kindly confirm below trades by sending "OK"

Account Id	***Account Name***	***Exchg. Seg***	***Trading Symbol***	***Series/Expiry***	***Instrument Name***	***Option Type***	***Strike Price***	***Net Buy Qty***	***Net Sell Qty***	***Net Qty***	***Net Value***	***Buy AvgPrice***	***SellAvgPrice***
1067121	*RAMESH KUMAR GUPTA*	*NFO*	*NIFTY17AUG10050CE*	*31-Aug-2017*	*OPTIDX*	*CE*	*10050.00*		*2025.00*	*-2025.00*	*43537.50*		*21.50*
1067121	*RAMESH KUMAR GUPTA*	*NFO*	*NIFTY17AUG10100CE*	*31-Aug-2017*	*OPTIDX*	*CE*	*10100.00*	*2025.00*		*2025.00*	*-30982.50*	*15.30*	
1067121	*RAMESH KUMAR GUPTA*	*NFO*	*NIFTY17AUG9750CE*	*31-Aug-2017*	*OPTIDX*	*CE*	*9750.00*	*2025.00*		*2025.00*	*-294637.50*	*145.50*	
1067121	*RAMESH KUMAR GUPTA*	*NFO*	*NIFTY17AUG9750PE*	*31-Aug-2017*	*OPTIDX*	*PE*	*9750.00*	*2025.00*		*2025.00*	*-162000.00*	*80.00*	
1067121	*RAMESH KUMAR GUPTA*	*NFO*	*NIFTY17AUG9800CE*	*31-Aug-2017*	*OPTIDX*	*CE*	*9800.00*		*2025.00*	*-2025.00*	*231862.50*		*114.50*

106712 1	RAMESH KUMAR GUPTA	NFO	NIFTY17 AUG9800PE	31-Aug-2017	OPTIDX	PE	9800.00		2025.00	-2025.00	198450.00		98.00

Thanks & Regards,

Sachin M. Patel
Senior Executive- Derivative -COE
Aditya Birla Money Limited
RTech Park, 10th Floor, Nirlon Complex, Off. W.E. Highway, Goregaon (East), Mumbai 400063
Ph. 022 - 62257245 - Website: www.adityabirlamoney.com"

Email Reply dated August 14, 2017 from client to Noticee

"*Yes*"

2. Email dated September 12, 2017 from Noticee to client code 1067121

"Dear Sir,

Kindly confirm below trades by sending "OK"

Account Id	Account Name	Exchg. Seg	Trading Symbol	Series/Expiry	Instrument Name	Option Type	Strike Price	Net Buy Qty	Net Sell Qty	Net Qty	Net Value	Buy AvgPrice	SellAvgPrice
106712 1	RAMESH KUMAR GUPTA	NFO	NIFTY17 SEP10000CE	28-Sep-2017	OPTIDX	CE	10000.00		2025.00	-2025.00	192806.25		95.21
106712 1	RAMESH KUMAR GUPTA	NFO	NIFTY17 SEP10000PE	28-Sep-2017	OPTIDX	PE	10000.00		2025.00	-2025.00	192375.00		95.00
106712 1	RAMESH KUMAR GUPTA	NFO	NIFTY17 SEP10100CE	28-Sep-2017	OPTIDX	CE	10100.00		2025.00	-2025.00	101047.50		49.90
106712 1	RAMESH KUMAR GUPTA	NFO	NIFTY17 SEP10200CE	28-Sep-2017	OPTIDX	CE	10200.00	2025.00		2025.00	-45967.50	22.70	
106712 1	RAMESH KUMAR GUPTA	NFO	NIFTY17 SEP9700PE	28-Sep-2017	OPTIDX	PE	9700.00		2025.00	-2025.00	53662.50		26.50
106712 1	RAMESH KUMAR GUPTA	NFO	NIFTY17 SEP9800PE	28-Sep-2017	OPTIDX	PE	9800.00	2025.00		2025.00	-80595.00	39.80	
106712 1	RAMESH KUMAR GUPTA	NFO	NIFTY17 SEP9900CE	28-Sep-2017	OPTIDX	CE	9900.00	2025.00		2025.00	-321971.25	159.00	
106712 1	RAMESH KUMAR GUPTA	NFO	NIFTY17 SEP9900PE	28-Sep-2017	OPTIDX	PE	9900.00	2025.00		2025.00	-123930.00	61.20	

Thanks & Regards,

Sachin M. Patel
Senior Executive- Derivative -COE
Aditya Birla Money Limited

Email Reply dated September 12, 2017 from Client to Noticee

"Y"

3. Email dated September 27, 2017 from Noticee to client code 1062077

"*Dear Sir*

Trade Executed:

26.09.2017

Account Id	Account Name	Exchg. Seg	Trading Symbol	Series/Expiry	Instrument Name	Option Type	Strike Price	NetBuy Qty	NetSell Qty	NetQty	NetValue	BuyAvg Price	SellAvg Price
1062077	NISHA PRAKASH DHARMANI	NFO	ARVIND17SEP400CE	43006	OPTSTK	CE	400.00	2000.00		2000.00	-800.00	0.40	
1062077	NISHA PRAKASH DHARMANI	NFO	RBLBANK17SEP540CE	43006	OPTSTK	CE	540.00	2000.00		2000.00	-2000.00	1.00	
1062077	NISHA PRAKASH DHARMANI	NFO	HDFCBANK17OCTFUT	43034	FUTSTK			500.00		500.00	-895475.00	1790.95	

27.09.2017

Account Id	Account Name	Exchg.Seg	Trading Symbol	Series/Expiry	Instrument Name	Option Type	Strike Price	NetBuyQty	NetSellQty	Net Qty	NetValue	BuyAvgPrice	SellAvgPrice
1062077	NISHA PRAKASH DHARMANI	NFO	ARVIND17OCTFUT	26-Oct-2017	FUTSTK			2000.00		2000.00	-747100.00	373.55	
1062077	NISHA PRAKASH DHARMANI	NFO	ARVIND17SEPFUT	28-Sep-2017	FUTSTK				2000.00	-2000.00	743400.00		371.70
1062077	NISHA PRAKASH DHARMANI	NFO	HDFCBANK17OCT1840CE	26-Oct-2017	OPTSTK	CE	1840.00		500.00	-500.00	8750.00		17.50
1062077	NISHA PRAKASH DHARMANI	NFO	RBLBANK17OCTFUT	26-Oct-2017	FUTSTK			2000.00		2000.00	-1022300.00	511.15	
1062077	NISHA PRAKASH DHARMANI	NFO	RBLBANK17SEPFUT	28-Sep-2017	FUTSTK				2000.00	-2000.00	1018000.00		509.00

Kindly revert "OK" thus confirming your trades,

Thanks & Regards,

Sachin M. Patel

Senior Executive- Derivative -COE
Aditya Birla Money Limited
RTech Park, 10th Floor, Nirlon Complex, Off. W.E. Highway, Goregaon (East), Mumbai 400063
Ph. 022 - 62257245 - Website: www.adityabirlamoney.com"

Email Reply dated September 27, 2017 from client to Noticee

"ok,"

4. Email dated August 29, 2017 from Noticee to client code 1035795

"Dear Sir

Kindly revert OK thus confirming your trades

Account Id	Account Name	Exchg. Seg	Trading Symbol	Series/Expiry	Instrument Name	Option Type	Strike Price	Net Buy Qty	Net Sell Qty	Net Qty	NetValue	Buy Avg Price	Sell Avg Price
1035795	AJAY GUNVANTRAI SHAH	NFO	HINDPETRO17AUGFUT	42978	FUTSTK			15750.00		15750.00	-7370212.50	467.95	
1035795	AJAY GUNVANTRAI SHAH	NFO	IOC17AUGFUT	42978	FUTSTK			15000.00		15000.00	-6540600.00	436.04	
1035795	AJAY GUNVANTRAI SHAH	NFO	NESTLEIND17AUGFUT	31-Aug-2017	FUTSTK				1000.00	-1000.00	7077000.00		7077.00

Thanks & Regards,

Sachin M. Patel
Senior Executive- Derivative -COE
Aditya Birla Money Limited
RTech Park, 10th Floor, Nirlon Complex, Off. W.E. Highway, Goregaon (East), Mumbai 400063
Ph. 022 - 62257245 - Website: www.adityabirlamoney.com"

Email Reply dated August 29, 2017 from client to Noticee

"Ok"

28. I note that there are numerous instances, as shown above, when the trades have been executed and later informed the clients about the same.

29. Further, during inspection, the resolution of complaints received directly by the Noticee was verified and 20 samples pertaining to unauthorized trades/misappropriation were taken as a sample out of 403 complaints received directly and closed by Noticee. SEBI analysed relevant emails and call recordings

to understand the complaint resolution process used by Noticee. In this regard, following observations were made:

a) In one case there was no trade confirmation from client's side and in 12 cases confirmation w.r.t trades executed in the account of clients was taken from clients post execution of the trades.

b) Noticee was managing the client's portfolio/account as it was directing the client about the positions.

c) Noticee also informed the clients about prices at which it will close the position and buy or sell specific stocks and was at the discretionary side.

d) Noticee assured the client that positions that were in loss, were calls given by the company. Hence, there was no problem to carry forward the same and the Noticee had left positions open until there was profit to be booked.

e) Noticee had given the details of profit i.e. Rs. 3000/- made by it on a particular day, in the account of client and asked permission of client to generate more profit.

f) In seven instances, Noticee while sending the email to complainant to close the complaints inter alia mentioned that client had confirmed the trades when trade confirmation calls were made to client by Noticee, and client was part of decision making.

30. Noticee has contended that out of 20 complaints only 2 clients have preferred to file complaints with exchanges and other 18 clients were satisified with their response and have not chosen to escalate their grievance with exchange. Further, Noticee has submitted that out of 2 complainants, one complaiant viz. Ms. Namrata Rai's complaint was disposed off by the IGRP of the exchange without any admission of claim and another complainant viz. Ms. Aarti Kathuria filed arbitration at NSE where the matter was disposed off rejecting her claim. I note that the IGRP and Arbitration minutes have not been produced by the Noticee so as to know the

reasoning in the said orders. Nonetheless, the present adjudication proceedings are independent.

31. I note that the complaints pertained to unauthorized trades/misappropriation. The excrepts of few of the complaints and reply of ABML, as examples, read as follows –

1. Client Complaint from Mr. Ganesh Palla

"Client complaints for wrong commitments from Mr. Prabhu (BP-DHARMAVARAM) stating will provide monthy basis (5000/- to 6000/-) on 50k investment .. till now he hasnt brought in profit & again insisting to pay for more 50k. Now client wants to close his account".

Reply from ABML

"*Dear Mr. Palla,*

Greetings from Aditya Birla Capital!

This is with reference to your complaint raised at our call center on 28 December 2018. We would like to inform that as per the feedback from your branch, they are not given any commitment to you.

With reference to your complaint our branch officer had spoken with you and explained the trade details.

The contract notes sent to your registered email address clearly indicates the purchase and sale value of various derivative contracts including intra – day transactions and a simple perusal of the same would provide the details of profits or losses sustained. The margin bills disseminated would clearly give you a picture of the status of shares offered as margin and the outstanding debits in your account.

In addition to that you were in receipt of SMS pertaining to each and every trade placed in your account which clearly explain the rate at which the order executed in your trading account.

Please note that trades were executed in your online trading terminal and you had regularly monitoring your account through online.

In view of the above submissions we would like to state that we would not be in a position to accede to the demands made by you….."

2. Client Complaint from Mr. Jatin Pandey

1st mail:-

"Dear Sir/Madam,

This is with reference to mishandling of my account by ABML Ghaziabad branch
Despite my repeated instructions, investments were made in riskier portfolios and to cover the initial losses this trend was continued.
Further, I was assured via phone and in a personal meeting at their office that the losses would be covered by December 15 however, now the response seems to be defensive.
There were moments where the loss could have been minimized (no stop loss) but the opportunity was not utilized and thus I had to bear excessive losses. I was told that many of the calls were company calls which also brings into focus the advice of the company to its agents.
Kindly provide a solution to this problem and enquire on whose fault it is and a projected recovery schedule of the losses.
My client id is 1043942.
With regards
Jatin Pandey
Faculty, Indian Institute of Management Kozhikode
Kerala, India"

Reply from ABML

"Dear Mr. Pandey,
Greetings from Aditya Birla Capital!
This is with reference to your email dated 04 and 11 December 2017.
We would like to assure you that we are committed to good service and it is always our primary endeavor to serve the best interests of our customers.
We would like to inform that majority of the trades in Equity CASH segment was executed by you through online terminal.
We would also like to inform you that we had investigated the trades executed in future and option segment and we found that you had acknowledged the trade during the confirmation calls received by you.
In addition to that you were in receipt of SMS pertaining to each and every order placed in your account during the market hours which clearly explain the rate at which the order executed in your trading account.
Please note that you had acknowledged statement of account till 16 June 2017 and you had also received physical SOA in his registered address for the month November 2017 as per high loss category.
Further your Branch Manager Mr. Vineet Jain is in regular touch with you for further relationship and commercials correction.
Thank you for reaching out to Aditya Birla Capital Stocks and Securities. Have a nice day. …"

3. Client Complaint from Ms. Kajal Hazra

The dates in which transactions without my consent was made,are as follows.:

June 2018: 19th and 29th

July 2018: 10,11,17 & 26th

August 2018: 1st , 3rd,8th & 9th

There may be some other instances of those transactions which I might have missed.

Reply of ABML

Dear Ms. Hazra,

Greetings from Aditya Birla Capital!

This is with reference to your email dated 02 February 2019.

We would like to submit that we have a robust and transparent risk management process which is driven by sharing details pertaining to your trading account. You are in receipt of contract notes margin statement and statement of accounts to your registered email id on a regular basis.

The contract notes sent to your registered email address clearly indicates the purchase and sale value of various derivative contracts including intra – day transactions and a simple perusal of the same would provide the details of profits or losses sustained. The margin bills disseminated would clearly give you a picture of the status of shares offered as margin and the outstanding debits in your account.

In addition to that you were in receipt of SMS pertaining to each and every order placed in your account which clearly explain the rate at which the order executed in your trading account.

In addition to that you have also continued to provide confirmations on trade confirmation calls and have been actively participating in the decision making process. Only upon sustaining losses you are seeking to dispute the said transactions.

Further it was also observed that you had accessed and verified your account through online.

The very fact that you were aware of the losses would go to support our contention that all transactions were effected with your consent and as such we cannot accept your allegation pertaining to unauthorized execution of trades.

We would like to submit that the primary duty of monitoring investments rests with the customer and not with the broker. A broker basically carries out the instructions of the client and at no point of time can be held responsible for the commissions and omissions of the customer. As a broker we have communicated the details of your transactions and have also appraised you of losses and have cautioned you of the consequences. Having disregarded our notice and having failed to take appropriate

decisions at the right time, you are now seeking to hold us responsible for your acts which we believe is not appropriate.

In view of the above submissions we would like to state that we would not be in a position to accede to the demands made in your mail.

32. From the above, I note that there have been serious allegations like unauthorized trading levelled by the clients. With regard to the observation that trade confirmation was taken taken from clients post execution of the trades, Noticee has submitted that requirement of maintainenance of pre-order confirmation was put in place in September 2016 and was made effective from April 01, 2018. Further, it was submitted that SEBI came with clarification circular dated November 30, 2017 which inter alia stated –

"The above mentioned SEBI circular also prescribes that 'when dispute arises, the burden of proof will be on the broker to produce the above records for the dispute trades'. However for exceptional cases such as technical failure etc. where broker fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt / payment of funds / securities by client in respect of disputed trade, etc. shall also be considered".

33. However, I note that since disputes have arisen via customer complaints, I note that Noticee has not brought any proof showing that the orders originated from the clients. Further, the clients have raised the issue that trading was done without their consent. In this regard, I note that though the SEBI circular referred to by the Noticee had come into effect from 2018, however, stock brokers were not prohibited from maintaining call data records or any other proofs with respect to placing of orders by clients moreso in the past proceedings against the Noticee there were complaints about unauthorized trading. In the above background it becomes necessary for the Noticee to maintain proofs of order placements by clients. Moreover, I note that the Noticee was having the practice of maintaining call data records for order placements during the time the impugned transactions

were executed. Therefore, the gesture by the Noticee to cite reference to a later circular of SEBI is not supporting its conduct.

34. Further, client has provided the transcript of the voice call log pertaining to the client Mool Chand Gupta as Annexure 4 in its reply dated July 05, 2020. From the said conversation, it is also observed that the Noticee was giving trade confirmations post the execution of the trades. The same also supports the finding that the trades were broker driven and the clients had a passive role to play.

35. With regard to the observation that Noticee had given the details of profit i.e. Rs. 3000/- made by it on a particular day, in the account of client and asked permission of client to generate more profit, I note that generating profit cannot be the object of the broker.

36. With regard to the observation that in seven instances, Noticee while sending the email to complainant to close the complaints inter alia mentioned that client had confirmed the trades when trade confirmation calls were made to client by Noticee, and client was part of decision making, Noticee has contended that a part of the emails reads as - "*In addition to that you have also continued to provide confirmations on trade confirmation calls and have been actively participating in the decision making process.*". Noticee has submitted that it in no way suggests the Noticee's involvement in the decision making process. However, as noted previously, the trades were broker driven and the clients have not initiated the trades. Clients have confirmed the recommendation of the Noticee or confirmed the trades post their execution. Thus, I do not find any merit in the above contentions of the Noticee. I note that Noticee has contended that out of seven complaints, in five complaints, the disputed transactions were effected prior to the implementation of SEBI circular dated March 22, 2018 as can be inferred from the complaint letters. Admittedly, in rest of the cases the Noticee has executed trades of clients without any evidence of the client placing such order. The post facto approval(s) and trade confirmation is more of a formality to secure the broker itself.

37. The Noticee has also produced letters and emails from clients stating that the trades were initiated and executed as per their instructions and they have not availed PMS services from ABML. In this regard, I note that the same are an afterthought. The letters and emails are of no avail as these have been obtained from the clients after SEBI communicated vide letter dated May 29, 2019 the findings of its inspection to the Noticee for comments.

38. Further, the Noticee has contended that few of the clients have decided to trade through them after the disputed transactions. However, the same does not nullify the nature of the issues in the complaints that were made in the first place.

39. From the above, I note that client was not the only person who was taking the decision w.r.t trades. By making trades confirmation calls to clients after executing the same, Noticee had tried to validate trades executed by Noticee. It is noted that Noticee was managing the accounts of clients and taking trading decisions on behalf of clients. Noticee was also managing the portfolios of clients.

40. As per Regulation 14(1)(a) of PM Regulations, a portfolio manager should enter into an agreement with the client before taking up management of a portfolio of securities on its behalf, which was not done by Noticee. As per Clauses A (1), (2), (5) and B (7) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI (Stock-Broker) Regulations, 1992, a registered stock broker should maintain high standards of integrity, exercise due skill and care, comply with statutory requirements and should not make investment advice to client in ordinary circumstances, which was not followed by Noticee as alleged by SEBI. As per SEBI Circular no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, brokers should execute trades of clients only after keeping evidence of the client placing such order, which was not done by Noticee.

41. Thus, Noticee has violated Regulation 14(1)(a) of PM Regulations, Clauses A (1), (2), (5) and B (7) of Code of Conduct specified in Schedule II read with Regulation

9 of SEBI (Stock-Broker) Regulations, 1992 and SEBI Circular no. SEBI/HO/MIRSD /DOP1/CIR/P/2018/54 dated March 22, 2018.

B. <u>Misleading the clients by understating losses and overstating profits</u>

<u>Findings based on SI and JI</u>

Profit Pay-outs:

42. As per SEBI Circular, in case Running Account Authorization is obtained from the clients, a stock broker should settle the client's account atleast once in calendar month/quarter, as agreed with the client. As per the Settlement Policy of ABML, it is stated that ABML would settle the accounts for each client and the time difference between two settlements will not be more than 90 days and that settlement shall not be on a particular date for all the clients. It is also stated that while arriving at the list of clients who would be eligible for the quarterly settlement of account, the following criteria will be adopted and followed consistently:

Clients having open positions in the last month of the Quarter, margins available to the extent of 225% will be retained as a standard / uniform approach to meet the maximum likely margin obligations as an abundant precaution, for the next 3 trading days or thereafter, in order to ensure such clients do not get into a square off mode or hassles unnecessarily. Any balance available post the above retention, will be released to the client as part of the quarterly settlement process.

43. It may be noted that the KTM Investors had alleged that Mr. Hemant Thukral represented that Profits in Option Contracts (which expires every month) will be settled on monthly basis. It is observed from the SOA of client codes (913103, 913134, 913133, 913093, 1002271, 913383 – pertaining to the KTM investors) that during the course of trading by these clients, several payouts were made by ABML to these clients, almost on monthly basis and in some cases more than once in a month. It is also observed that vide email dated October 12, 2015, Mr. Hemant Thukral stated to Mr. Kamlesh Mody that "*In all our accounts payment regarding Options strategies, as discussed will be released on 20th of this month*.". In this

regard, Noticee has contended that the said email of Mr. Hemant Thukral only suggests that the pay-outs regarding options strategies will be released on 20th and does not mention that these were profit payouts. I note that as discussed subsequently in this order, the losses from expiring options contracts were covered from premium from sale of options. The same enabled the Noticee to release payouts.

44. ABML stated that the Company has effected timely payout of eligible securities and eligible funds i.e. ABML has paid out free balances of funds and securities, as and when the same was sought, as per the applicable rules and regulations of SEBI and Exchange. It is alleged that ABML stated that on certain occasions they had also paid some amounts based on the requests of the complainant, though KTM Investors were not eligible for such pay-outs (due to utilization of their funds and securities for transactions at that point of time), post taking approvals.

45. It is observed that, as alleged by KTM Investors, payouts made by ABML had no specific periodicity or correlation with the profit and loss statements, even though they were referred to as "profit pay-outs". It is alleged that no specific reference as to the basis of pay-outs are mentioned in the ledger statements or in retention statements and neither ABML could provide evidences indicating that all such pay-outs were backed by client’s requests.

46. In this regard, Noticee has contended that KTM investors have accepted that payouts had no specific periodicity or correlation with profit and loss statements. It was also submitted that Mr. Kamlesh Mody also accepted having understood the payment process and also records that pay-outs can be for option selling or profits, and submitted email dated 01/09/2015 of Mr. Kamlesh Mody to Mr. Hemant Thukral in this regard. In this regard, I note that periodical settlement is manadatory and the investor / broker have no choice. I further note that the FAQs issued by the stock exchanges (viz. NSE Circular Ref. No.: 318/2018 dated February 02, 2018), also state that regarding the periodicity for settlement of client funds and securities,

mandate of the client should be there as to whether the settlement of funds and securities should be done on a monthly or quarterly basis. The FAQs also state that obtaining of authorization from the clients to the effect that no settlement need be done for particular month(s) / quarter(s) is contradictory to the SEBI requirement and hence not permissible. Therefore, even if frequent payouts are made to the clients, then also periodical settlement is mandatory.

47. During inspection, in order to verify the quarterly settlements made to these clients, ABML was advised to provide the dates on which the settlements were made to these clients along with amount released. It was observed from the details provided by ABML that during 2014-16, ABML has not released any amount as Quarterly settlement for KTM Group of clients and retained the funds and securities stating that the same is retained for meeting 225% of T Day Margin Requirement in Derivatives segment as prescribed by the Stock Exchanges. However, the same is incorrect as upon perusal of the SOA it is observed that within a few days from the settlement date, pay-outs have been made to the clients which are matching with the profit pay-outs as stated in the emails and Profit Arm Document provided by the Noticee to the clients. Details are given in the below mentioned table:

Table - 3

Name of the Investor	Date on which Settlement done as per SEBI requirements (as provided by ABML)	Amount Released	Date of Payout made	Payout made as per SOA and stated as "Profit Payout" as per Profit Arm Document emailed and provided by Mr. Hemant Thukral (In Rs)
Kamlesh Mody	29-05-2014	0	02-06-2014	5,00,000.00
Kamlesh Mody	30-07-2014	0	01-08-2014	4,08,000.00
Kamlesh Mody	27-11-2014	0	02-12-2014	5,08,000.00
Kamlesh Mody HUF	27-11-2014	0	02-12-2014	5,06,000.00
Leena Mody	21-11-2014	0	02-12-2014	8,90,000.00
Leena Mody	16-11-2015	0	30-11-2015	21,00,000.00
Mitali Kamlesh Mody	11-07-2014	0	01-08-2014	3,88,000.00
Mitali Kamlesh Mody	26-02-2015	0	16-03-2015	3,50,000.00
Mitali Kamlesh Mody	06-08-2015	0	03-08-2015	4,75,000.00
Rangaraj Investment	27-08-2014	0	01-09-2014	18,25,000.00
Sonali Kamlesh Mody	23-04-2014	0	25-04-2014	1,50,000.00

Sonali Kamlesh Mody	30-08-2014	0	10-09-2014	2,61,000.00

48. In this regard, Noticee has contended that several types of pay-outs were effected, and on many occasions, KTM investors were seeking payouts of dividends as well as option credits as stated in their mails (email dated 01/09/2015 from Mr. Kamlesh Mody to Mr. Hemant Thukral). Further, Noticee has submitted that as per SEBI payout criteria which is effected once in a quarter at that point of time, the system applies stringent criteria of 225% margin on existing positions, whereas normal payouts may be done if only 100% margins are maintained. In this regard, I note that since the relationship with the KTM investors / Mr. Luke was not just that of broker-client, the Noticee was not making payments on dates on which settlement were done but was making frequent payouts on other dates. The above instances indicate that while ABML retained the funds with them on the stated dates, in which they have claimed to have made quarterly settlements, but within a few days, they have made pay-outs stating it as profit pay-outs to the investors.

49. Further, as seen from the below table, it is also observed that even these profit payouts were made when there was debit balance in the clients' accounts:

Table - 4

Name of the Investor	Date	Description / Narration	Balance before Payout (In Rs)	Payout as per SOA (In Rs)	Debit Balance after Payout (In Rs)
Rangraj Investments Pvt Ltd	26-Jun-15	Sett. Payout Abmoney	2,50,96,934.55 (Dr)	5,45,750.00	2,56,42,684.55
Alexander Luke	17-Aug-16	Sett. Payout Abmoney	91,78,606.23(Dr)	2,91,650.00	94,70,256.23
Kumar Suresh Oza	24-Nov-15	Sett. Payout Abmoney	21,38,070.74(Dr)	37,000.00	21,75,070.74
Mitali Kamlesh Mody	01-Aug-14	Sett. Payout Abmoney	-1,14,988.40 (Cr)	3,88,000.00	2,73,011.60
Mitali Kamlesh Mody	01-Aug-14	Sett. Payout Abmoney	2,73,011.59(Dr)	64,512.00	3,37,523.60
Leena Mody	19-Jun-15	Sett. Payout Abmoney	1,82,703.44(Dr)	96,000.00	2,78,703.45

Noticee in its reply has contended that while issuing the pay-out they have always ensured that adequate margins are maintained even after such release of pay-out. I note that the Noticee has not disputed the facts regarding debit balance or the payments made as given in the above table and as brought out by SEBI in the inspection report.

a. Noticee has submitted that Mr. Alexander Luke had requested a payout and based on the risk coverage and margin availability, payout of Rs.2.91 lakhs on 17.08.2016 was effected. However, I note from the above table, that the client was having debit balance on the respective date i.e. 17.08.2016 when payout was given. Further, Noticee has submitted that without prejudice to the submission aforesaid, it is submitted that Mr. Luke had preferred to file a complaint with SEBI, wherein the same contention of Mr. Luke was adjudicated by 3 IGRP members and the complaint was dismissed without admission of any claim and post the IGRP order Mr. Luke has not preferred to file any Arbitration case and thus the accepted position is that the said pay-out was not in the form of a profit pay-out as alleged. Further, Noticee has submitted that It is reiterated that SEBI is estopped from raking up same issues through different proceeding when the IGRP members have dismissed the complaint which has been accepted by Mr. Luke. In this regard, I note that IGRP proceedings cannot curtail SEBI's powers including initiation of adjudication proceedings. Further, it is noted that IGRP vide its meeting held on October 18, 2016 has given the following order –

   "*After considering the written submissions and hearing the parties, the following order is being passed.*

   Both parties were heard and explained of their respective positions. However no amicable settlement could be arrived. Hence parties are advised to take further course of action as they deem fit and as contemplated under the exchange regulations.".

   From the same, I note that the complaint of Mr. Luke was not dismissed as there were arguments and counter arguments and IGRP had advised the parties to go for arbitration. I note that IGRP did not find the complaint to be

baseless. I find that the Noticee is misrepresenting the facts during the present proceedings.

b. Noticee has contended that similarly, Mr. Kumar Oza had received credit worth Rs. 13.20 lakhs on 26.11.2015 on account of derivative option transactions effected by him on 24.11.2015, 25.11.2015 being a settlement holiday and only a payout of Rs. 37,000 was released and as such the allegation that client has been issued with a "profit" payout when the account was in debit cannot be sustained. Further, Noticee has contended that it is not even the contention of the client that this was a profit pay-out and that he has ever been misguided. In this regard, I note that a payout has been provided by the Noticee to its client on 24.11.2015 which is prior to the client receiving credit balance of Rs. 13.20 lakh on 26.11.2015. Further, I note that Mr. Kumar Oza had a debit balance of Rs. 21.38 Lakh and hence even after the adjusting credit of Rs. 13.20 lakh, the client would still have had a debit balance of more than Rs. 8.18 lakh. Hence the payout was effected when the client had debit balance. Thus, I find no merit in the contentions of the Noticee in this regard.

c. For Ms. Mitali Mody, Noticee has submitted that she had sold securities worth Rs. 4.42 lakhs on 31/07/2014 and the payout of the same came on 04/08/2014, however as the client had requested for a payout, a sum of Rs. 3.88 lakhs was paid out on 01/08/2014 and the other payout of Rs. 0.65 lakhs was dividend payout as indicated in the table. However, I note that the payouts have been effected when the client was not having sufficient credit balance and in advance of the client receiving credits in her account.

d. For Rangaraj Investment Pvt. Ltd, Noticee has submitted that the payout of Rs. 5.45 lakhs made to client on 26/06/2015 was a dividend payout which was received on 24/06/2015 as indicated in the table. The contentions of the Noticee to this extent are noted.

e. For Ms. Leena Mody, Noticee has submitted that client had received credit worth Rs. 11.97 lakhs on 22/06/2015 in her statement of accounts on account of derivative transactions carried out by her on 19/06/2015,

20/06/2015 & 21/06/2015 being Saturday and Sunday, however as the client had requested for a payout, a sum of Rs. 0.96 lakhs was paid out on 19/06/2015. However, I note that the payouts have been effected when the client was having debit balance and prior to the client receiving credit in her account. This conduct of the Noticee equally supports the claim that the Noticee was engaged in PMS with the complainant clients and the relationship was not just a broker-client one.

50. I note that though ABML claimed that the pay-outs are paid out of free balances of funds and securities, as and when the same was sought, as per the applicable rules and regulations of SEBI and Exchange, it is observed that not all such pay-outs were backed by client's requests. In this regard, Noticee has contended that requests for pay-out may be written or oral and it is not mandatory to maintain a record of pay-out requests. In this regard, I note that these requests assume importance when disputes arise and Noticee has to bring its own such evidences to prove its claim. Noticee has further submitted that there are several communications wherein KTM investors were seeking payouts of premium on sale of options and Noticee has submitted letters /emails dated 23.03.2015, 27.03.2015, 28.03.2015, 03.04.2015, 29.06.2015, and 01.09.2015. On perusal of the said emails and letters, I note that not all such emails and letters record request for release of payout from the Noticee.

51. I note the arguments of the Noticee that several pay- outs were expected and on many occasions. In this regard, I note that in terms of SEBI Circular MIRSD/SE/Cir-19/2009 dated December 03, 2009 it is obligatory on the broker to settle the funds and securities of all its clients as per law and as per the periodicity chosen by the investors. I also note in this regard the FAQs of NSE (viz. NSE Circular Ref. No.: 318/2018 dated February 02, 2018) state that obtaining of authorization from the clients to the effect that no settlement need be done for particular month(s) / quarter(s) is contradictory to the SEBI requirement and hence not permissible. Even if frequent payouts are made to the clients, then also periodical settlement is

mandatory. For the above reasons I tend to disagree with the arguments of the Noticee that several payments were made to clients and the same cannot be considered to be a valid justification exempting itself from compliance with the applicable laws.

52. I note that the Noticee has on one hand been arguing that pay -outs could not be made because of margin obligations of clients. However, on perusal of the above table - 4, I note that the Noticee had made payments even when the client accounts were in debit. This shows that the Noticee has been adopting contradictory stand while dealing with allegations.

53. Further, on perusal of emails dated 23/12/2014 of Mr. Hemant Thukral and dated 09/01/2015 of Mr. Vishal Muni of ABML, it is noticed that these pay-outs are stated as profit pay-outs. The said emails were providing “Mody family Profits & Payouts for FY 2014 – 2015” and “Profit Payout in Rangraj Till date details” respectively (Annexure D in Annexure X of SSCN). KTM Investors were also provided with a hard copy of the “Profit Arm Document” signed by Mr. Hemant Thukral (Annexure J in Annexure X of SSCN). On perusal of the same, it is observed that it discloses the profit pay-outs made to KTM Investors for FY 2014-15 and FY 2015-16 on monthly basis. On perusal of SOA for KTM Investors, it is also confirmed that the amount indicated as “Profit Payouts” were actually paid to KTM Investors. Noticee has contended that with regards to the email and the annexed sheets thereto it is submitted that the subject line is “Profits & Pay-out” and not “Profit Pay-out” and that the excel sheets also record payments and profits in different rows and nowhere it is mentioned that the pay-outs were in exact co-relation to the profits. However, in this regard, I note that the email dated 09/01/2015 of Noticee mentions “Profit Payout in Rangraj Till date details” in its subject and provides the payouts given from July 2014 to November 2014. Hence, the contention is untenable.

54. ABML has stated that regarding the Profit Arm Document sent as hard copies which had payout details and gross profit and loss details, the same were prepared at the

behest / request of KTM Investors at various intervals. ABML has stated that Profit and Loss (P&L) figures were arrived on a month on month basis by taking into account the net profits earned on closed option contracts in a given month and net profits of open options contracts whose strike price was near to the prevailing Nifty Settlement Price in the expiry week. Further, it was stated that Profit and Loss figures of open contracts which are Deep in the Money or Deep out of the Money were not taken into account for the purpose of reporting as these contracts were either being rolled over by the customer or will have lost their value.

The "Profit Arm Document" sent through email and hard copy by ABML to KTM investors (i.e. Annexure D and J in Annexure X of the SSCN) mentions the profits made by the clients, pay-outs made and the remaining Net Buffer kept. I note that these profit pay-outs (stated as so by ABML) are not reflective of true profits or loss of the clients during those months. The figures admittedly do not contain Profit/Loss figures of open contracts which are Deep-in-the-Money or Deep-out-of-the-Money and in some cases arrived at by adding the difference between the Debit and Credit Futures and Options Bills. I note that there is no logic or any prudent basis in excluding such open contracts which are Deep-in-the-Money or Deep-out-of-the-Money for every month and thus, the true position to the clients was not stated through these statements or pay-outs. Thus, the pay-outs made, which are stated to be profits, serves to mislead the clients that they were making profits, when actually they were making loss (illustrated in the Para below). The same would encourage the clients to continue to trade in the strategy offered by ABML.

55. It was observed that on each of the month when pay-outs were made, (which are stated to be profit pay-outs), for that expiry period the investors were actually suffering losses as per the Client Global Net Outstanding (Options Closing) Arbitrage Position provided by ABML. To illustrate, few payouts made to Leena Mody along with the losses on those expiry periods are given below:

Table - 5

Name of the Investor	Date of Payout made	Payout made as per SOA and	Expiry date	Loss (excluding Stamp duty, transaction

		Profit Pay-out as per Profit Arm Document emailed and handed over (in Rs)		charges, STT, Delayed payment charges and late pay-in Document emailed charges etc.) as per Profit and Loss Statement emailed by ABML (in Rs.)
Leena Mody	02-12-2014	8,90,000.00	27-11-2014	-2,51,223.75
Leena Mody	30-12-2014	7,50,000.00	24-12-2014	-70,03,809.00
Leena Mody	15-01-2015	5,50,000.00	29-01-2015	- 1,53,13,096.30

The day-wise pay-outs made to the investors as per SOA, which are stated to be profit payouts as per the aforesaid emails and the statement signed by Mr. Hemant Thukral and actual losses as per the Profit and Loss Statement for the corresponding period are given in below table –

Table - 6

Name of the Investor (A)	Date of Payout made (B)	Pay-out made as per SOA and Profit Pay-out as per Profit Arm Document emailed and provided by Mr.Hemant Thukral (C)	Expiry date (D)	Loss (excluding Delayed payment charges and late pay-in charges etc.) as per Client Global Net Outstanding (Options Closing) Arbitrage Position of ABML (E)
Kamlesh Mody	16/04/2014	2,25,000.00	27/03/2014	-14,60,015.00
Kamlesh Mody	30/12/2014	7,00,000.00	24/12/2014	-38,91,705.75
Kamlesh Mody	16/03/2015	3,50,000.00	26/02/2015	-1,56,096.25
Kamlesh Mody	23/10/2015	5,10,000.00	24/09/2015	-28,68,451.00
Kamlesh Mody HUF	16/03/2015	3,20,000.00	26/02/2015	-1,80,872.50
Kamlesh Mody HUF	21/05/2015	5,50,000.00	30/04/2015	-6,79,084.81
Kamlesh Mody HUF	23/10/2015	1,45,000.00	24/09/2015	-9,91,939.00
Leena Mody	09/09/2014	1,48,000.00	28/08/2014	-5,32,760.00
Leena Mody	02/12/2014	8,90,000.00	27/11/2014	-2,51,223.75
Leena Mody	30/12/2014	7,50,000.00	24/12/2014	-70,03,809.00
Leena Mody	15/01/2015	5,50,000.00	29/01/2015	-1,53,13,096.30
Leena Mody	21/05/2015	32,00,000.00	30/04/2015	-51,83,326.11
Leena Mody	23/10/2015	11,05,000.00	24/09/2015	-1,15,64,730.50
Mitali Kamlesh Mody	16/04/2014	55,000.00	27/03/2014	-13,52,440.90
Mitali Kamlesh Mody	06/01/2015	2,10,000.00	24/12/2014	-25,20,737.00
Mitali Kamlesh Mody	16/03/2015	3,50,000.00	26/02/2015	-2,20,692.50

Rangaraj Investment	02/12/2014	13,20,000.00	27/11/2014	-10,09,708.75
Rangaraj Investment	31/12/2015	35,00,000	31/12/2015	-16,98,307.50
Sonali Kamlesh Mody	16/04/2014	1,75,000.00	27/03/2014	-10,45,061.00
Sonali Kamlesh Mody	06/01/2015	1,90,000.00	24/12/2014	-29,91,823.25
Sonali Kamlesh Mody	16/03/2015	3,20,000.00	26/02/2015	-8,04,416.25

56. I note that the Noticee has claimed that the KTM investors have requested for credit by option selling and further stated that the said investors were aware how the pay-outs were made. In this regard, I note that a broker who maintains a mere "broker – client relationship" is not expected to do the kind of service the Noticee has argued to have been done to KTM investors. It is also not necessary for the broker to wait for the payment request to be made by the investors. Payment of monies and securities is a continuous process that shall seamlessly be carried out by every broker without raising any objection, provided there are no regulatory or legal restrictions to do so.

57. I also note that the Noticees have also been arguing that the KTM investors only have designed the format of profit and loss statement. In this regard, I note that the broker is not expected to send any customized report to its clients the way that has been strangely argued by the Noticees. Though the client might have demanded certain statements in a specific fashion and design however, it is not obligatory on a stock broker simpliciter to accommodate such request unless it is warranted by law. The Noticee cannot do parallel reporting or reporting at the client's requests. By the above conduct the Noticee stands to prove again that its relationship with the clients are just not that of a broker and a client and it is something beyond that. For the above reasons I tend to disagree with the arguments advanced by the Noticee taking shelter under the garb of client approvals or authorizations.

58. As mentioned above, the pay-outs were made stating as profit pay-outs, even when the profit and loss statements proivded to KTM investors - (i.e. Client Global Net Outstanding (Options Closing) Arbitrage Position statement) disclosed losses in

each of these years. On analysis of pay-outs made by ABML for FY 2014-15 and FY 2015-16, which are stated to be Profit pay-outs as mentioned above, and the Profit and Loss statement - Client Global Net Outstanding (Options Closing) Arbitrage Position statement, following are observed:

Table - 7

Particulars	FY 2014-15 (In Rs)	FY 2015-16 (in Rs)
Total of Profit payouts to KTM Investors as per Profit Arm Statement (Annexure J in Annexure X of SSCN), which tallies with the actual Payout made as per SOA	Rs. 2,97,48,000.00	Rs. 2,68,81,000.00
Approx. Loss by aggregation of Profit and Loss (Client Global Net Outstanding (Options Closing) Arbitrage Position statement) of KTM Investors, which excludes delayed Pay-in charges and Late Pay-in charges (Annexure L in Annexure X of SSCN)	(Rs. 4.15 Crores)	(Rs. 5.70 Crores)
Approx. Loss accumulated for KTM Investors after taking into account significant charges levied by ABML including delayed Pay-in charges and Late Pay-in charges (Annexure L in Annexure X of SSCN)	(Rs. 4.33 Crores)	(Rs. 6.97 Crores)

59. From the above findings, I note as follows :

- ABML is providing Pay Outs in periodical intervals, without client's requests.

- Further, vide various emails/correspondences, it is stated that these are profit payouts.

- Even the payouts are made, when there is debit balance and even without retention of Margin Money as required in NSE circular dated September 07, 2012 read with FAQ of NSE and NSE circular dated October 29, 2013.

- These are not actual profits. As on the date of pay-outs, the clients have not made profits, but have incurred losses.

- The same indicates that these payouts were made as profit payouts to clients to make them believe that they are making profits and to hide/understate the losses.

Differences in Profit and Loss Statements sent to Clients:

60. It is noted that KTM Investors received various profit and loss statements for the same period which are listed below:
    a) Profit and loss statement provided through email by ABML representatives during continuance of trading (Annexure N in Annexure X to SSCN)
    b) Hard copies of profit and loss statement provided by Mr. Hemant Thukral (Annexure O in Annexure X to SSCN)
    c) Hard copies/emails of Profit arm documents provided by Mr Hemant Thukral and his team during the continuance of trading – indicating profit and pay-out. (Annexure J in Annexure X to SSCN)
    d) Profit and Loss statement provided by ABML - (Client Global Net Outstanding (Options Closing) Arbitrage Position statements), reflecting the Profit and Loss in the derivative positions for the client in that Financial Year (Annexure P in Annexure X to SSCN).

61. I note that out of the above-mentioned statements, **Client Global Net Outstanding (Options Closing) Arbitrage Position** statements is nearer to the correct position. On verification, it is observed that there is substantial difference between the figures in the Profit and Loss Statement sent by representatives of ABML through emails, hard copy of Profit and Loss Statements received by Mr. Kamlesh Mody on behalf of all KTM Investors, and the Profit and Loss Statements received by KTM Investors - Client Global Net Outstanding (Options Closing) Arbitrage Position statement.

62. I note that Profit and Loss Statements concerning KTM Investors were emailed to Mr. Kamlesh Mody by ABML representatives during continuance of the trade. Following emails were perused (Annexure N in Annexure X to SSCN):

Table - 8

Email from	Date	Time	Client Account	P&L period
Vishal Muni	04/06/13	18:38	Leena Mody	2012-13
Kalpesh Aravindbhai Maniar	04/06/13	15:24	Leena Mody	2012-13
Anand Moha	05/08/13		Leena Mody	2012-13
Vishal Muni	06/08/13	11:35	Leena Mody	2012-13
Hemant Thukral	10/03/15		Leena Mody	2014-15
Hemant Thukral	19/04/14		Kamlesh Mody	2013-14
Hemant Thukral	19/04/14		Sonali Mody	2013-14
Hemant Thukral	19/04/14		Mitali Mody	2013-14
Vishal Muni	06/08/13	12:14	Rangraj Investments	2012-13
Vishal Muni	04/06/13	18:01	Rangraj Investments	2012-13
Vishal Muni	06/08/13	10:56	Rangraj Investments	2012-13
Kalpesh Aravindbhai Maniar	04/06/13	15:24	Rangraj Investments	2012-13
Hemant Thukral	14/05/14		Rangraj Investments	2013-14

63. Noticee has submitted that the reason for difference in the various profit and loss statements is because of year end open positions being included in some reports and not in others. Therefore, it was contended that there is no discrepancy in any of the reports as alleged. However, it is observed from the above table that some of the P&L Statements attached in the emails for the same periods are at variance with each other. Further, during inspection, with respect to the hard copy of the profit and loss account (Annexure O in Annexure X to the SSCN), allegedly received by the KTM Investors, ABML had stated that it did not match with any of the profit and loss statements generated from their back-office systems and hence, could not have been shared by ABML. However, the same cannot be accepted, as it is observed that the same copies were shared by the representatives of ABML to the KTM Investors through emails mentioned in above table. Further, with regard to the above contention that the reports in Annexure O were not provided by the Noticee and that they deny the contents therein so far as they do not match with their records, I note that the Noticee has provided a plain denial without any explanation as to how their clients received the same or who issued the said

reports. I note that the reports in Annexure O clearly carries name of the Noticee, account code of the client, account name of the client, Run Date and Run Time etc for the reports. From the above, it is clear that these statements pertain to the Noticee and any denial of the same without any basis is not accepted.

64. Noticee has submitted that the difference between profit and loss statement in Annexure N and Annexure P are due to the report in Annexure N contains the contracts that are settled within that financial year and also open contracts whereas Annexure P contains only contracts which were closed within that financial year. Noticee has submitted that the reason for difference in the various profit and loss statements is because of year end open positions being included in some reports and not in others.

65. Further, Noticee has submitted that the reports in Annexure J were prepared at the behest of KTM investors as per their method of calculation and did not contain Deep in the Money contracts. In this regard, it is reiterated that the broker is not expected to send any customized report to its clients the way that has been strangely argued by the Noticees. Though the client might have demanded certain statements in a specific fashion and design however, it is not obligatory on a stock broker simpliciter to accommodate such request unless it is warranted by law. By the above conduct the Noticee stands to prove again that its relationship with the clients are just not that of a broker and a client and it is something beyond that. For the above reasons I tend to disagree with the arguments advanced by the Noticee taking shelter under the garb of client approvals or authorizations.

66. On comparison of the hard copy of Profit and Loss Statement given to KTM Investors and those which had also been emailed with the Client Global Net Outstanding (Options Closing) Arbitrage Position (Options Closing Arbitrage Position) (i.e. Profit and Loss Statement which reflects the Profit and Loss in the derivative positions by the client in the FY - which is near to the correct position),

there were significant differences in the Profit and Loss Figure stated between both the statements:

Table - 9

	FY 2012-13	FY 2013-14	FY 2014-15
Kamlesh Mody			
Loss as per Hemant Thukral (**HT**) email dated 19/04/14 and Hard copy received		-81,270.48	
Loss as per P&L - Options Closing Arbitrage Position		-15,01,429.98	
Profit as per Hard copy			4,09,845.33
Loss as per P&L - Options Closing Arbitrage Position			-35,18,742.78
Kamlesh Mody HUF			
Profit as per Hard copy			17,21,387.62
Loss as per P&L - Options Closing Arbitrage Position			-43,60,782.22
Leena Mody			
Loss as per P&L statement provided as per Email of Kalpesh Aravind Bhai Maniar on 04/06/13 @ 15:24	-1,71,531.74		
Loss as per Hard copy and Email of Vishal Muni on 04/06/13 @ 18:38	-3,56,176.24		
Profit as per P&L - Options Closing Arbitrage Position	1,92,749.89		
Profit as per Hard copy		3,40,133.32	
Loss as per P&L - Options Closing Arbitrage Position		-54,59,884.73	
Profit shared as per Email of HT on 10/03/2015 (for 201415)			1,00,31,244.48
Profit as per Hard copy			32,59,499.48
Loss as per P&L - Options Closing Arbitrage Position			-2,53,67,234.94
Mitali Mody			
Loss as per Hard copy and Email of HT 19/04/14		-87,376.27	
Loss as per P&L - Options Closing Arbitrage Position		-13,86,056.77	
Profit as per Hard Copy			27,52,765.00
Loss as per P&L - Options Closing Arbitrage Position			-6,68,638.17

Sonali Mody			
Loss as per Hard copy and Email of HT 19/04/14		-70,058.23	
Loss as per P&L - Options Closing Arbitrage Position		-10,75,023.23	
Profit as per Hard Copy			23,50,735.07
Loss as per P&L - Options Closing Arbitrage Position			-25,74,813.78
Rangraj Investments Private Limited			
Loss as per Email of Vishal muni dated 06/08/2013	-2,06,385.56		
Loss as per Hard copy and Email of Vishal muni dated 04/06/2013	-2,38,773.00		
Loss as per P&L - Options Closing Arbitrage Position	-84,860.92		
Profit as per Hard copy and Email of HT 14/05/14		40,52,295.89	
Loss as per P&L - Options Closing Arbitrage Position		-99,86,985.86	
Profit as per Hard copy			73,58,731.75
Loss as per P&L - Options Closing Arbitrage Position			-49,63,350.36

67. As could be observed from the table, I note that the profit and loss statement sent for the same period by ABML representatives through email and hard copy are completely at variance with the actual position and had understated the losses and shown fictitious/overstated profits.

68. The argument of ABML that Client Global Net Outstanding (Options Closing) Arbitrage Position file shared by department of ABML and the Client Wise Global Net Position (Derivative Cumulatives) could not be compared and the difference is due to the brokerage, open positions and parameters chosen at the time of generation of the report is not acceptable. The reason being that the Broker is expected to provide the report to the client which reflects true and actual position and the statement which does not mislead the client. It is the responsibility of the

broker to ensure that its employees and representatives provide correct statements to the clients at all times with proper internal control mechanisms.

69. Further, during inspection, with a view to verify the difference between the Client Global Net Outstanding (Options Closing) Arbitrage Position and Client Wise Global Net Position (Derivative Cumulatives) in Derivative Segment, on sample check basis, both the said statements were generated for Ms. Leena Mody for FY 2014-15 and 2015-16. On perusal of the same, I note that the differences between both the statements are minor and only relates to the open positions at the end of the financial year. Out of the same, it is observed that Profit and Loss Statement generated out of Client Global Net Outstanding (Options Closing) Arbitrage Position is statement which gives the nearest position- which reflects the positions as in the contract register of the client (even though the Profit/Loss calculated in such statement is not after deduction of delayed/late pay-in charges - Ideally, Profit or loss should indicate profit generated after all the expenses/charges/losses to reflect a correct position). Noticee has submitted that they use leading back office software and Delayed pay-in charges and such other charges are not reflected in the profit and loss statement, however they are reflected in ledger.

70. However, it is observed that the differences between the statements sent by ABML, were not just pertaining to the contract which are expiring at the end of the financial year (most of the statements were sent in email well after the last expiry period in the concerned FY) or due to non-inclusion of brokerage or other charges, as claimed by ABML. To illustrate, I note as follows –

    1. For the client Mr. Kamlesh Mody, in the Hard Copy of Profit and Loss Statement and the Statement shared through email dated 19/04/14 (Client Wise Global Net Position(Derivative Cumulatives) by Mr.Hemant Thukral, the loss arising out of Call option Contract in Nifty 50 having expiry date 27/03/2014 @ strike price of 6500 is Rs. -1,94,863.00, whereas loss for the same contract as per Profit and Loss Statement - (Client Global Net Outstanding (Options Closing) Arbitrage Position) is Rs. - 2,96,272.50. It may be noted that the email was sent after expiry of

contract dated 27/03/14 i.e.19/04/14 and the run date of the report is April 10, 2014.

2. Similarly, for the client Rangraj Investments Private Limited, in the Hard Copy of Profit and Loss Statement and the Statement shared through email dated 14/05/14 by Mr. Hemant Thukral (Client Wise Global Net Position (Derivative Cumulatives), the loss arising out of Put option Contract in Infosys having expiry date 27/03/2014 @ strike price of 3800 and 3850 is Rs. -22,36,275.00 and Rs. -7,08,938.00 respectively, while loss for the same contracts as per Profit and Loss Statement - (Client Global Net Outstanding (Options Closing) Arbitrage Position statement) are Rs. -1,02,36,175.00 and Rs. -82,02,487.50 respectively, this is due to difference in purchase value of the same contracts mentioned in both the statements. It may be noted that this email was also sent after expiry of contract dated 27/03/14 i.e.14/05/14 and the run date of the report is also 14/05/14. Irrespective of the name/type of the statement, it is the responsibility of the broker, to ensure that the statement sent shows the correct position to the client. These instances shows that the losses were grossly understated.

71. As illustrated above, the contract values for the same contracts appearing in the hard copy version and those given in emails are different from the Profit and Loss Statement (given in Client Global Net Outstanding (Options Closing) Arbitrage Position) for the same contract. Further, on perusal of the differences in those statements, it is observed that even a number of contracts appearing in the Client Global Net Outstanding (Options Closing) Arbitrage Position were not shown in the hard copy version or those given in emails as detailed in below table. All such contracts are listed in Annexure –R in Annexure X to the SSCN. As an illustration the number of contracts not appearing in the hard copy / Emails (as listed in Annexure –R in Annexure X to the SSCN) for the FY 2014-15 but appearing in the Client Global Net Outstanding (Options Closing) Arbitrage Position are mentioned below –

Table - 10

Name of client	Financial Year	No. of Executed Contracts not appearing in the hard copy / Emails (as listed in Annexure –R in Annexure X to the SSCN)
Kamlesh Mody	FY 2014-15	97
Leena Mody	FY 2014-15	49
Mitali Mody	FY 2014-15	86
Sonali Mody	FY 2014-15	96
Rangraj Investment	FY 2014-15	113

72. Noticee has submitted that all observations pertain to Annexure O which it had denied that it was provided by them. However, I note that the differences also pertain to the reports provided by emails of the Noticee. Thus, I do not find any merits in the said contention of the Noticee.

73. Further, it is observed that vide emails dated 12/10/2015, 17/11/2015 and 10/12/2015, Mr. Hemant Thukral had provided to Mr. Kamlesh Mody the (i) booked profit transactions for Aug-Sept, 2015, (ii) Option Profit arm payment for KTM Investors (stating that the said payments will be disbursed by 23rd of Nov), and (iii) option profit arm pay-out due for October and November, respectively. I note that though, Mr. Hemant Thukral has claimed Profit for August, September, October and November, 2015 in these emails, actually, as per the Client Global Net Outstanding (Options Closing) Arbitrage Position, the investor had made losses in most of the corresponding periods. It is also observed that along with KTM Investors, Profits pertaining to Mr. Kumar Ohja was also being emailed to Mr. Kamlesh Mody, whereas Mr. Kumar Ohja was not part of the KTM Investors.

74. ABML in reply has given hard copies of few Profit and Loss Statements signed by investors stating that they have acknowledged the losses:

Table - 11

Name of the Investor	Type of Statement	Period of P&L	Date of signature by the investor
Kamlesh Thokral Mody HUF	P&L (Option Closing)	Apr-Aug, 2015	19/09/2015
Rangraj Investments Pvt Ltd	P&L (Option Closing)	Apr-Dec, 2015	07/01/2016
Kamlesh Thokral Mody HUF	P&L (Option Closing)	Apr-Dec, 2015	07/01/2016
Alexander Luke	P&L (Option Closing)	27/03/2015 to 31/12/2015	21/01/2016
Sonali Mody	P&L (Option Closing)	27/03/2015 to 24/12/2015	07/01/2016
Kamlesh Thokral Mody	P&L (Option Closing)	27/03/2015 to 24/12/2015	07/01/2016
Mitali Mody	P&L (Option Closing)	27/03/2015 to 24/12/2015	07/01/2016
Leena Mody	P&L (Option Closing)	27/03/2015 to 24/12/2015	07/01/2016

ABML has also provided the hard copies of SOAs provided to KTM Investors.

75. It may be noted that SOA does not indicate the profit and loss made by the clients. Further, it may be noted that these P&L statements signed by the investors were only specific to certain periods. These statements would not in any way negate the differences between P&L statements sent in the hard copy / emails and P&L statements as per Options Closing Arbitrage Position as mentioned in the above paragraphs. Further, Mr. Kamlesh Mody vide email dated 25/02/2016 to Mr. Hemant Thukral had stated that "*You have always proclaimed that the ledger is not important so signing is of no consequence and accordingly you have taken signatures without proper inspection and on many occasions when you had to prove to your boss that the signature was already there. And every time you have promised at the time of taking the signature not to worry and every adjustment will be reversed and past profits will be paid to you*."

76. Noticee has contended that they deny that Profit and Loss statements signed by KTM investors were only specific to certain periods. Further, it was submitted that KTM investors have signed Profit and Loss Statements and the same was enclosed in their reply. Further, it was submitted that along with Profit and Loss statements KTM investors have also acknowledged Ledger statement. Further, Noticee has

stated that the email dated 25/02/2016 was a unilateral email from KTM which was sent after he stopped dealing with them. In this regard, I note that as established earlier from the emails, the trades were broker driven and the clients confirmed the trades post execution. The strategy of trading was designed by the Noticee wherein the investors played a passive role.

77. Noticee has contended that it is incorrect to state that they have submitted the Profit and Loss statement of Mr. Luke only for the period April 2015 — December 2015. Further, Noticee has stated that they submitted the following profit and loss statements which are duly acknowledged by Mr. Luke from time to time:

Table - 12

Name of Investor	Type of Statement	Period of P & L
Alexander Luke	Profit and Loss (Options Closing)	27.03.2014 – 31.03.2015
Alexander Luke	Profit and Loss (Options Closing)	27.03.2015 - 1.06.2015
Alexander Luke	Profit and Loss (Options Closing)	27.03.2015 - 27.08.2015
Alexander Luke	Profit and Loss (Options Closing)	27.03.2015 - 31.12.2015
Alexander Luke	Profit and Loss (Options Closing)	27.03.2015 - 28.01.2016
Alexander Luke	Profit and Loss (Options Closing)	27.03.2015 - 25.02.2016

It was further submitted that the profit and loss statements would be printed and sent by post to Mr. Luke who would verify the same with the transactions effected by him, would confirm the same by affixing his signatures and would send back the same to the Noticee through post. Noticee has stated that this was done at various intervals and covers the entire financial years 2014-2015 and 2015-2016 when Mr. Luke sustained losses, and these statements cannot be simply brushed away. I note that Mr. Luke in his complaint (Annexure A to Annexure X to SSCN) has stated "*Often when I had delayed sending the signed receipts, Mr. Thukral would ring me, assuring me that these difficult to read numbers in a tiny font were identical to what he was sending so I need not have any worry but they were required for audit purposes hence the urgency.*". The same shows that the Noticee was misleading its clients regarding the profits/losses in their accounts.

Noticee has submitted that without prejudice to the submission aforesaid, it is submitted that Mr. Luke had preferred to file a complaint with SEBI, wherein the same contention of Mr. Luke was adjudicated by 3 IGRP members appointed by NSE and the complaint was dismissed without admission of any claim and further

that post the IGRP order Mr. Luke has not preferred to file an Arbitration case and thus the accepted position is that the P&L Statements singed by Mr. Luke were satisfactory and enforceable. Noticee has further submitted that SEBI is estopped from raking up same issues through different proceeding when the IGRP members have dismissed the complaint that has been accepted by Mr. Luke. In this regard, I note that the order of the IGRP (IGRP meeting held on October 18, 2016) has been stated in the previous paragraphs and I do not find any merit in the aforesaid contention of the Noticee as SEBI is not estopped from initiating action based on the findings of the inspection carried by it. I note that SEBI is well within its regulatory powers to initiate actions including adjudication proceedings.

78. Further, I note that ABML Surveillance had sent emails dated May 02, 2015 to Mr. Kamlesh Mody wherein it was mentioned that loss on derivative segment as on April, 30, 2015 was Rs.7.28 Lakhs and for Rangraj Investments was Rs.19.88 Lakhs. Mr. Kamlesh Mody replied vide email dated May 02, 2015 that they were surprised about the said loss, as they were informed that profit for the said expiry was Rs.5.67 Lakhs and Rs.18.62 Lakhs respectively. Similarly, on June 05, 2015, ABML Surveillance had informed that loss to Kamlesh Mody HUF and Rangraj Investments Private Ltd account on June 04, 2015 was Rs.25.98 Lakhs and Rs.7.71 Lakhs respectively. I note that the investors disagreed with the figure. I also note that Mr. Hemant Thukral vide email dated June 06, 2015 stated that "*Already requested Surveillance to not to send mail, as they lead to confusion*". Similarly, vide email dated December 22, 2015, it was stated that as on December 21, 2015, the loss was Rs. 32.71 Lakhs. Mr. Hemant Thukral had sent an email dated December 22, 2015 stating that "*Discussed with Surveillance, they will not send any P&L during contract and we will send final day PNL only, with clear profit booked arms and M to M open/rolled over positions separately; sorry for any confusion caused. I assure you it will be taken full care.*". This trail of communications indicates that whenever the actual expiry losses were brought to the notice of the client, Mr. Hemant Thukral replies to the investors that he will

instruct Surveillance not to send such emails to avoid confusion. The above instances shows the attempt to mislead the clients, by hiding the actual position.

79. With regard to the above, Noticee has contended that the concerns of the KTM investors were resolved and in this regard has submitted an email dated June 09, 2015 from Mr. Kamlesh Mody to Mr. Hemant Thukral. However, from the email dated June 06, 2015, I note that the same also supports the observation that Mr. Hemant Thukral was doing parallel reporting.

80. I note that Mr. Hemant Thukral, sent various Estimated P&L and P&L tables to Mr. Alexander Luke (emails dated 03/12/2015, 12/04/2016, 13/04/2016, 09/05/2016, 10/05/2016, 11/05/2016, 12/05/2016, 16/05/2016,17/05/2016, 21/06/2016, 22/07/2016, 08/10/2016 and 10/10/2016, etc) for contracts having open positions.

81. Further, I note that vide emails dated April 06, 2016, April 05, 2016, May 29, 2016 and April 04, 2016, Hemant Thukral has forwarded Profit and Loss Statements to Mr. Alexander Luke for FY 2012-13, 2013-14, 2014-15 and April-July, 2015 respectively. The subject of the email stated “as seeked and advised by you”. It is observed that as per P&L Statement mentioned in the said email for FY 2013-14, the Loss for Mr. Luke is – Rs. 29,35,925.84. However, as per Client Global Net Outstanding (Options Closing) Arbitrage Position) for FY 2013-14, the loss is – Rs. 38,63,038.34. For the FY 2012-13 and 2014-15, the final figure of profit or loss is not mentioned in the email. Further, it is noted from the said P&L statements, certain figures were mentioned outside few rows. No explanation as to how these figures were arrived at or what they represent were not mentioned in the email. It is also observed, vide emails sent in the year of 2016 (dated February 26, 2016 and April 19, 2016), Mr. Hemant Thukral indicated to Mr. Alexander Luke that Rolled over Losses were not considered for purpose of calculation of profit and loss.

82. Noticee has submitted that estimated profit and loss statements / scenarios as sought and advised by Mr. Luke were sent to him basis his request which is clearly

confirmed in the subject line of some of the mails which clearly says "as seeked and advised by you" and has also referred mail dt. 07.04.2016 sent to Mr. Luke by them.

83. I note that ABML claimed these statements as “Scenarios”. However, in case of scenario analysis, at what scenario, a profit or loss will be realized/incurred has to be illustrated. However, in these statement, only an additional figure was included outside the table without any explanation. ABML claimed that the statement with “Scenarios” were prepared at the request of Mr. Alexander Luke. Further, ABML had given the reason for sending statement that Mr. Luke wanted to understand the scenarios, as to when he should have exited his positions vis-a-vis continuation of positions and Mr. Thukral helped Mr. Luke with which could have reduced losses to an extent. However, I note that the reason seems to be implausible, since all the transactions had already taken place and the profit/loss incurred. I also do not find merit in the Noticee’s contention that every human being tries to keep learning from his past mistakes and tries to analyze as to what he could have done differently to get better results and hence the analysis of SEBI that since the transactions had taken place there was no need to do a scenario analysis is incorrect. As mentioned above, all the trading decisions were taken by ABML and only post trades, confirmation was obtained from Mr. Luke. Hence, it would not have been possible for Mr. Luke to take any other positions, as the same is done by ABML for which consent was obtained later. Sending such estimated P&L statement with additional figures and profit and loss statements with scenarios and without explaining them, will mislead the investor.

84. In this regard, Noticee has denied that trading decisions were taken by them and only post trade confirmation was obtained from Mr. Luke and has quoted “*Mr. Luke at para 7 of his complaint dt. 30/09/2017, basis which had SEBI initiated our inspection, has stated that "Every morning of trading, a dealer of ABML would phone me around 9 AM conveying a trade to be done and approval sought, particularly, mentioning that these suggestions originated from Mr. Thukral and,*

following my telephonic approval, then send me a mail detailing the same, (e.g., Annexure 3.1.) They would remind me to OK the suggested trade by return mail, only after which the transaction would be carried out. These would be followed later in the day; after the trade was executed, by a trade confirmation e.g., Annexure 3.2. Both 3.1 and 3.2 are samples and such mails were repeated every day.". I note that the same also shows that the trades had emanated from the Noticee. I also note that the same also supports the observation that relationship in this case is different from that of a normal broker – client relationship, wherein the client only instructs the stock broker to execute certain trade(s). I note that in most of the instances, trades were executed by the ABML representatives and confirmation were obtained from the investors, post execution of the trades and such confirmations were more of a formality. Thus, I note that the client had a very passive role in the trades that happened in their account.

85. Further, with regard to the above, Noticee has reiterated its contention that Mr. Luke had preferred to file a complaint with SEBI, wherein the same contention of Mr. Luke was adjudicated by 3 IGRP members appointed by NSE and the complaint was dismissed without admission of any claim. Further, Noticee has submitted that post the IGRP order Mr. Luke has not preferred to file an Arbitration case and thus the accepted position is that the P&L Statements signed by Mr. Luke were satisfactory and enforceable and that the other statements were merely a scenario analysis. I note that the Noticee's submission regarding statements being scenario analysis has also not been agreed upon by the client, Mr. Luke in his complaint. Further, I note that the Noticee is presuming that by Mr. Luke not prefering arbitration has accepted the position in the P&L statement. In this regard, I note that the IGRP order (meeting held on October 18, 2016) are as under:-

"1. Observations of IGRP: It is observed that the member has regularly issued the accounts statement and P&L statements and taken signatures from the complainant. The TM relies on the acknowledged set of documents to absolve itself of the fiduciary trust reposed by the complainant in handing over his entire portfolio to the wisdom of the TM & its Derivative Head Mr.Thukral.

2. Whereas the complainant has also produced a similar set of Profit & Loss statements sent to bim by Mr.Thukral with divergent profit figures, the complainant had reposed absolute trust and faith on the profit figures sent directly to him by email by Mr.Thukral over the last 4 years and has taken it be the gospel as regards the state of affairs of his transactions with TM ; to the extent turning a blind eye to the figures while acknowledging the Statement of Accounts & P&L statements sent to him as physical documents by post by the TM.

3. The TM has produced telephonic conversations for 2nd May evidencing the confirmation of Debit in the account to the complainant. It is observed from the conversation that the complainant gets explanation to certain credíts due to sale of his holdings and to certain debits due to booking losses in F&O positions. The scope of the conversation does not show that the complainant was already aware of his losses as claimed by the TM.

4. A email from Mr.Thukral trying to explain the modus operandi of managing risks in HLL futures as against sale of HLL holdings was placed before this forum by the complainant. The tone and tenor of the mail seems unusual for a member who already by virtue of powers conferred by the exchange regulations bas a lien on the shares of the client in case of a debit in the clicnt's account. The TM is yet to explain the real reason behind this email. It only appears an attempt to browbeat the complainant to sell his priced holdings to cover up the losses piled up by the TM on behalf of the complainant.

5. It is still a puzzle as to why a senior officer like Mr. Thukral was running a parallel reporting mechanism sending alternative profit statements to the complainant with special markings of profit figures in an extended column. The claim, of the TM alleging that such irregular reports (i.e "scenarios" as termed by the TM) are churned only at the behest of the complainant- and with details given by the complainant doesn't hold organizations like ABML in good stead in the eyes of the public.

6. Out of a spate of emails produced by the complainant, there are a few which havc been written by Mr. Thukral, plcading with the complainant not to stop his transactions with tbc TM. The mails dated 27th March, 29th March & May 12th read in chronological order presents this case in a different light."

86. ABML has been claiming that they have been sending statements as mandated by SEBI/Stock Exchange in all trading accounts - Mails pertaining to trade confirmations, SMS on Orders placed, Trades effected, on Margin shortfall, ageing debit clearance, Contract Notes, Margin statements, Statement of Accounts, Statement of securities, Profit and Loss statements, Demat statements pertaining to transactions / holdings and Payouts taken by complainant from time, was in receipt of various confirmations and that client had acknowledged / confirmed transactions effected in all trading accounts.

87. I note that the present case is different from a situation wherein the clients were initiating the trades and no other misleading statements were provided. However, in these cases, as observed above, Profit and Loss Account sent by the team of Mr. Hemant Thukral/Wealth Management team does not reflect the actual position and has understated the losses. Further, it is pertinent to note that whenever losses were pointed out by the Surveillance Team of ABML and the client protested against the said figure, Mr. Hemant Thukral had sent emails to the clients stating that he would instruct Surveillance to not to send any emails. Further, in these cases, as stated above, all trading decisions were taken by ABML on behalf of the investors and investors were playing only a passive role.

88. Considering the same, it is the responsibility of ABML to inform the correct position to the investors, especially if they are sending any statement other than what is statutorily prescribed. However, in these cases, several reports/statements sent by ABML understated the losses and shown fictitious/overstated profits which was to mislead the clients.

89. From the above findings I note that pay-outs were made to KTM Investors, claiming them to be profit pay-outs, when the investors were actually making losses. Further, various reports/statements were provided to the investors claiming to be profit and loss statements which were at variance with the actual positions and had understated losses and shown fictitious/overstated profits. These misleading positions/misstatements to the clients by ABML distorted the actual position. Thus,

it appears that by concealing the material facts and by giving false statements, clients were made to trade in the strategy proposed by ABML and thereby they continue to earn brokerage and other charges.

90. In view of the above, I conclude that the Noticee has violated the provisions of Regulation 3(a) and Regulations 4(1), 4(2)(l), 4(2)(m), 4(2)(o) and 4(2)(p) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and Clauses (A)(3), (A)(5) and B(4)(b) of Code of Conduct mentioned in Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

C. Losses are covered by premium on sale of options and shown only at the later stages:

Findings based on SI and JI

91. It was alleged by the KTM Investors that they have also noted that the premium generated from sale of options expiring in subsequent period was more than the cumulative loss in 12 out of 15 quarters. It is noted from the SOA that though on ongoing basis, F&O contracts were purchased, there was hardly any pay-in from these investors. With respect to the losses arising in the current expiry periods, the pay-in had to be made by these clients, for taking fresh positions or for setting off the debit in their account. However, in these cases, the total funds and securities brought in at the initial stages were used to manage, without seeking pay-ins, in case of debit balances. Whenever there are heavy losses reflected at the time of settlement thereby causing debit entries in the SOA or debit Balances, credit is made by selling option contracts, and profit pay outs as promised were paid and fresh positions are taken on the basis of these credit entries. By selling these options, the losses arising out of the current expiry of the contract were hidden and postponed to the next expiry period. It is very pertinent to note that all these trades are broker driven and executed based on the decisions of Mr. Hemant Thukral and clients had played only a passive role.

92. I note that Noticee has submitted that selling of options for pay-out has no correlation with profits or losses as alleged. Further, the Noticee has denied the allegation of selling options to conceal the losses and issue pay-outs. However, it is noted that losses in the clients' accounts were covered by premium on sale of options and shown only at the later stages, and the said fact is buttressed by the following examples.

93. For example, the SOA of Leena Mody for the period 24/12/2014 to 30/12/2014 is given in the below table –

Table - 14

Date	Narration	Dr.	Cr.	Balance ("-" minus indicates credit balance)
24-Dec-2014	To Bill N/d/1223/ 1021 For Ex: Nsef - Bt: Futures - Settlement=141223 Product : Oas	13,66,397.41	0.00	66,05,985.02
26-Dec-2014	By Bill N/d/1224/ 1021 For Ex: Nsef - Bt: Futures - Settlement=141224 Product : Oas	0.00	39,57,889.95	26,48,095.07
26-Dec-2014	By Bill N/d/1224/ 1021 For Ex: Nsef - Bt: Futures - Settlement=141224	0.00	12,000.00	26,36,095.07
29-Dec-2014	By Bill N/d/1226/ 879 For Ex: Nsef - Bt: Futures - Settlement=141226	0.00	550.00	26,35,545.07
29-Dec-2014	By Bill N/d/1226/ 879 For Ex: Nsef - Bt: Futures - Settlement=141226 Product : Oas	0.00	16,35,007.00	10,00,538.07
30-Dec-2014	By Bill N/d/1229/ 926 For Ex: Nsef - Bt: Futures - Settlement=141229 Product : Oas	0.00	20,01,040.67	-10,00,502.60
30-Dec-2014	Sett. Payout Abmoney	7,50,000.00	0.00	-2,50,502.60

It can be noted that as on December 24, 2014, Ms. Leena Mody has a debit Balance of around Rs. 66.06 Lakhs. On December 24, 2014, the following contracts were sold for expiry date 29/01/2015 in Leena Mody's account:

Table - 15

Date	OT	/ Price	Buy Qty	Buy Value	Sell Qty	Sell Value
24/12/2014	CO	6600			-1000.00	-16,82,625.00
		6800			-12,000.00	-1,75,76,303.75
		7000			-3,000.00	-39,38,263.75
		8400	34,000.00	30,91,772.50	-2,000.00	-1,64,200.00

		8600			-32,000.00	-9,93,016.25
		8700			-16,000.00	-2,81,443.75
	PO	7900			-16,000.00	-5,55,063.75
26/12/2014	CO	8400	10,000.00	7,96,000.00	-10,000.00	-7,37,861.25
		8450			-5,000.00	-3,02,002.50
		8500			-5,000.00	-2,30,000.00
	PO	8000			-20,000.00	-11,64,683.75
29/12/2014	CO	8000	300.00	1,09,560.00	-3,500.00	-12,74,985.00
		8450	500.00	35,025.00		
	PO	8000	1,000.00	41,758.75		
		8600	300.00	86,550.00	-3,500.00	-10,01,050.00
30/12/2014	CO	8700	16,000.00	2,60,471.25		
	PO	7900			-8,000.00	-2,26,400.00
		8000			-8,000.00	-3,34,462.50

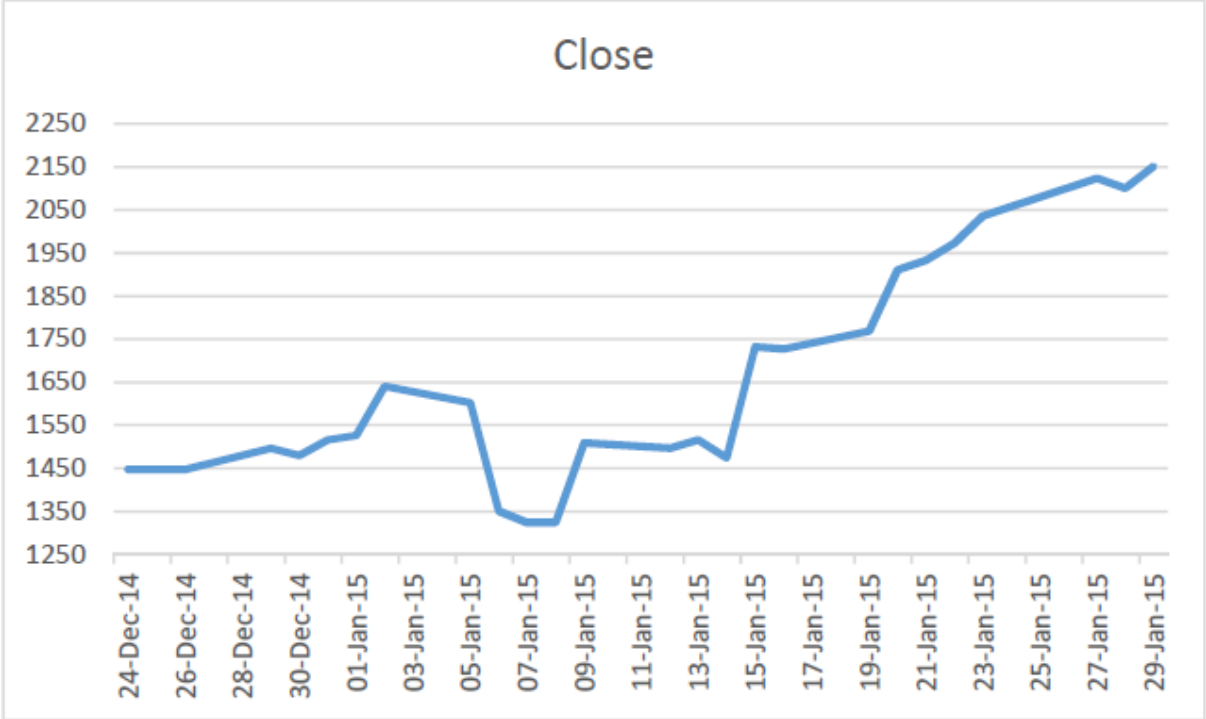
It is observed that by selling option contracts for the next expiry period, credit was created, contracts of previous expiry period (ending 24/12/2014) were squared off and a few buy positions were also taken. Further, it is noteworthy, that a “profit pay-out” of Rs. 7,50,000 was made on December 30, 2014 to the client.

Out of the said contracts, it is pertinent to mention that Call Option in the Strike Price of 6800 was sold and the Premium generated out of the same is around Rs.1.76 crores. The transaction details in the said contract are as below:

Table - 16

Date	Expiry Dt	OT	/ Price	Buy Quantity	Buy Value	Sell Qty	Sell Value
24-12-14	29-01-15	CO	6800			-12,000.00	-1,75,76,303.75
29-01-15	29-01-15	CO	6800	12,000.00	2,50,55,666.25		

Based on details in NSE, price chart @ LTP day-wise for the said contract is displayed below:



Thus, it could be observed from above table, the entire open position in Ms. Leena Mody Account for Sold Call Option in Strike Price of 6800 for Expiry Period (29/01/2015) was squared off only on 29/01/2015 (at the end of the date of expiry, when the price was at the highest), after selling the Options for the next expiry period (i.e. 26/02/2015). No pay-ins were sought from the investor in between. The loss for Ms. Leena Mody with respect to this contract (for Call Option in Strike Price of 6800 in Expiry Period (29/01/2015) as per P&L is around rupees 74.79 lakhs. The total loss for Ms. Leena Mody for expiry period 29/01/2015 is around Rs. 1.53 Crores.

Further, as mentioned above, a Payout of Rs.7.50 lakhs was made to Ms. Leena Mody on December 30, 2014, which was stated as Profit payout by Mr. Hemant Thukral. I note that this pay-out is not possible, without credit created out sale of Options mentioned above.

94. Further, the SOA for Ms. Leena Mody for the month of July-August, 2015 is given below:

Table - 17

Date	Narration	Dr.	Cr.	Balance ("-" minus indicates credit balance)
27-Jul-15	By Bill N/d/0724/ 1100 For Ex: Nsef - Bt: Futures - Settlement=150724 Product : Oas	0	51,174.49	15,26,440.50
28-Jul-15	By Bill N/d/0727/ 1131 For Ex: Nsef - Bt: Futures - Settlement=150727 Product : Oas	0	3,75,395.99	11,51,044.51
29-Jul-15	Being Journal Entry For Dividend For Scrip Hdfc Ltd @ 13.00 Per Share For 2000 Shares Rd-dt: 16/07/2015	0	26,000.00	11,25,044.51
29-Jul-15	To Bill N/d/0728/ 1069 For Ex: Nsef - Bt: Futures - Settlement=150728 Product : Oas	16,79,881.12	0	28,04,925.63
30-Jul-15	By Bill N/d/0729/ 1065 For Ex: Nsef - Bt: Futures - Settlement=150729 Product : Oas	0	30,50,878.63	-2,45,953.00
31-Jul-15	By Bill N/d/0730/ 1078 For Ex: Nsef - Bt: Futures - Settlement=150730 Product : Oas	0	45,60,388.18	-48,06,341.18
31-Jul-15	Being Late Pay-in For F&o Exposure For The Period 16-jul-15 To 30-jul-15	1,12,205.39	0	-46,94,135.79
31-Jul-15	Being Delayed Payment Charges For The Period 21.07.15 To 30.07.15	6,774.36	0	-46,87,361.43
01-Aug-15	Being Prod Dr/cr Trf To Nrml	0	46,81,705.28	-93,69,066.71
01-Aug-15	Being Prod Dr/cr Trf To Nrml	46,81,705.28	0	-46,87,361.43
03-Aug-15	Dp Dr Trf To Brkg - 11995219	29	0	-46,87,332.43
03-Aug-15	Sett. Payout Abmoney	30,75,000.00	0	-16,12,332.43

95. It may be noted that on July 27, 2015, in the account of Ms. Leena Mody, there was a debit balance of around Rs. 15 Lakhs. Without seeking pay-in from the investors, between July 27-30, 2015, following contracts were bought and sold on behalf of Ms. Leena Mody by ABML for expiry period 27/08/2015:

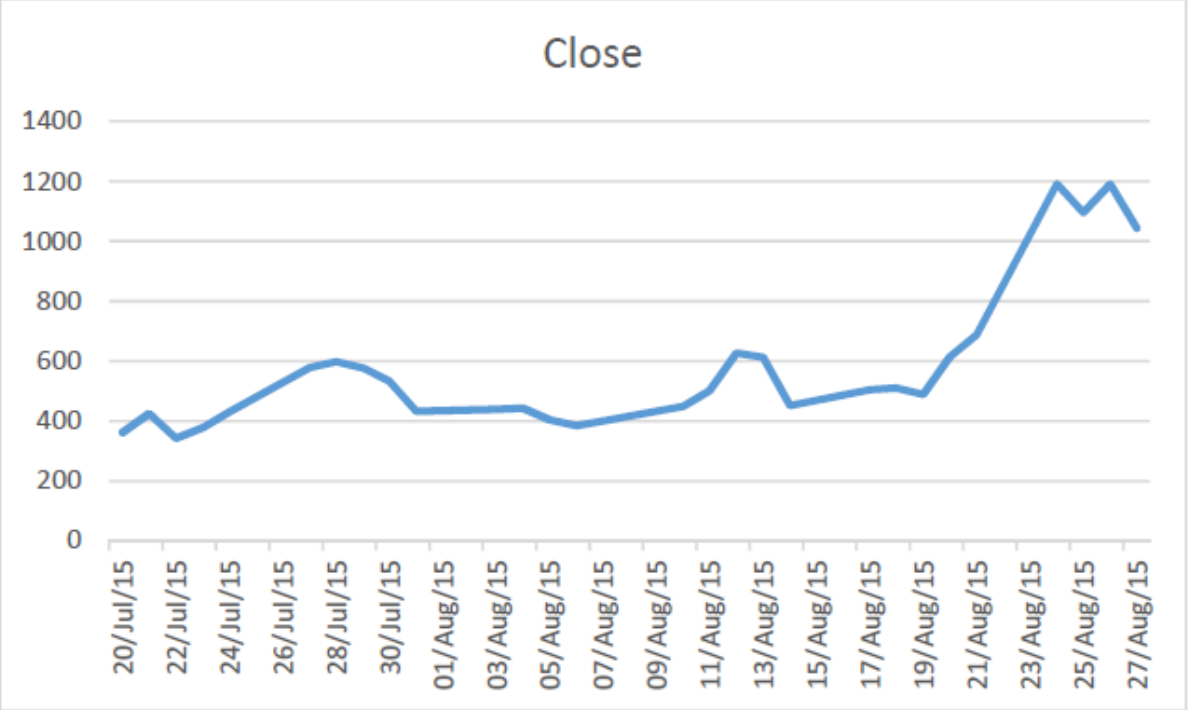
Table - 18

Date	OT	/ Price	Buy Qty	Buy Value	Sell Qty	Sell Value
27/07/2015	CO	8000			-17600	-88,56,898.75
	PO	**9000**			**-17600**	**-89,83,406.25**
28/07/2015	CO	8000			-17400	-76,24,271.25
	CO	8400	4500	7,28,248.75		
	CO	8700			-13500	-5,74,982.50
	PO	8000			-4500	-1,35,825.00
	PO	**9000**			**-17400**	**-1,00,18,196.25**
29/07/2015	CO	8000			-3000	-12,64,347.50
	PO	**9000**			**-3000**	**-17,89,196.25**
30/07/2015	CO	8000			-7850	-37,42,022.25
	CO	8400	5200	9,33,085.50		
	CO	8700			-15600	-7,00,468.50
	CO	8900	29100	4,29,056.50		
	PO	8000	4500	1,09,475.00		
	PO	**9000**			**-3000**	**-16,00,835.00**

Grand Total			43300	21,99,865.75	-120450	-4,52,90,449.50

96. From the above table, it can be observed that by selling option contracts for the next expiry period, amount was credited, contracts of previous expiry period were squared off (value = Rs. 3,67,10,977.50) and a few buy positions were also taken. Further, it is noteworthy, that a "profit pay-out" of Rs. 30,75,000 was made on August 03, 2015.

97. Out of the said contracts, it is pertinent to mention as an illustration that the Put Option in the Strike Price of 9000 was sold and the Premium generated out of the same is around Rs. 2.24 crores. Based on details in NSE, price chart for the said contract is displayed below:



98. I note that the entire quantum (41,000 Quantities) of the said contract was squared off only on 27/08/2015, when the price was the highest. The loss to Ms. Leena Mody w.r.t this contract was Rs. 2.36 Crores and to all the KTM Investors was around Rs. 3.60 Crores. After deducting the profits made in the expiry period, the total loss in the expiry period for the entire KTM Investors was Rs. 2.60 Crores. I

note that for the same expiry period, the loss for Mr. Alexander Luke was Rs. 51.85 Lakhs.

99. Noticee has contended that the instance of loss of Rs. 2.36 crores is incorrectly analyzed by SEBI, as the client (Ms. Leena Mody) had sold the calls and puts of same quantity and the benefit from sale of both these legs collectively has not been taken into account. I note that the call and put options had different strike prices. Further, the loss of Rs. 2.36 crores arrived at above specifically pertains to the sale of Put contracts with Strike Price Rs. 9000 by Ms. Leena Mody between 27/07/2015 and 30/07/2015 and their getting squared off on 27/08/2015. The profits / losses in other contracts has also been analysed to arrive at the total loss figure in the expiry period (i.e. 27/08/2015) for the entire KTM investors i.e. Rs. 2.60 crores. Hence, I don't find any incorrectness in the said analysis as argued by the Noticee.

100. In this regard, Noticee has contended that KTM investors were interested in receiving regular pay-outs and as a result options were sold by them since inception of their account. Further, Noticee has quoted email dated March 27, 2015 from Mr. Kamlesh Mody that he was aware that pay-outs are not just dependent on profits but are also done for options sale and therefore the allegation that credit of option sale were to suppress the losses is incorrect. In this regard, I note, as discussed form the examples above, in case of debit balances in the clients' accounts, credit balances were generated from premium from selling of options contracts and even payouts were released to the clients. In this regard, I note that due to the same the statements were showing profit position and hiding the actual debit balance position (Emphasis Supplied). Noticee has also contended that trades in the options segment were based on available margin as per the direction of KTM investors and profits or losses arising thereto are to the account of KTM investors and they do not have any obligation towards the same. I also note from the complaint of Mr. Kamlesh Mody (Annexure B in Annexure X to SSCN) that he has stated as follows - "*In or around Financial year ("FY") 2011-2012, Mr. Hemant Thukral and Mr. Purvesh Momaya from ABML approached me on behalf of ABML*

to provide their services to unlock the value of shares lying with the KTM investors. According to their representations and inducements, using KTM investors's shares as collateral, ABML would engage in range bound trade, a low-risk strategy, by buying and selling derivatives in the stock exchangeson behalf of the KTM investors. According to this strategy, ABML would ensure that the KTM investors would make profits on an aggregare basis. I had never exposed myself to such transactions, but did so, only on the basis of the presentations, inducements and representations made by Mr. Thukral on behalf of ABML. Specifically, Mr. Thukral assured me that:

a. Losses would only occur if the market opens up or down by a gap of >5%. According to ABML, this was not likely to happen more than 2 or 3 times a year and even in such a circumstance, the loss would never exceed 2%-3% of the value of shares.

b. Dividend accruing on the shares would continue to belong to KTM investors and ABML would remit the same to the KTM investors on the very same day or at the latest, on the next day of accrual.

c. Profit for every month will be settled on a T+2 basis. Also, at the end of every month, the KTM investors could choose to exit and their shares would be transferred in the next two days as free securities.".

As stated previously, from some of the emails and call logs it is observed that the trades were broker driven and executed based on the strategy designed by the Noticee and clients had played only a passive role. Therefore, I do not find merits in the above contentions of the Noticee.

101. Further, Noticee has contended that the securities of Ms. Leena Mody were adequate to cover the debit balance because of MTM losses as well as fresh positions. Further, Noticee has also contended that also the fact that both KTM investors as well as Mr. Luke sold substantial amount of shares in March 2015 (Rs. 4.5 crores) and December 2015 (1.05 crores) to offset the requirement of receiving funds pay-in, would go to negate the observation of SEBI. I note that the losses in the clients' accounts were covered by rolling over the contract to the next expiry

date by selling the option contract and receiving premium on it. By this *modus operandi*, the actual losses were hidden and resulted in accumulation of huge losses to the clients over a period of time. When the accumulated losses increased in proportion, and there was shortfall in the margin, the Noticee had to sell the securities and as a result the clients suffered huge losses. This kind of trading obviously was not advantageous to the clients.

102. Noticee has also contended that they had filed call logs wherein the loss of Rs. 51.85 Lakhs has been informed to Mr. Luke. In this regard, I note that the confirmation of losses to the clients have no meaning when the trades have emanated from the broker and the clients had a passive role to play. Thus, I am unable to accept the contentions of the Noticee.

103. With respect to another client, Mr. Bhupatlal Jivanlal Sheth, it is observed that there were debit balances in his account on September 30, 2015. As in the above-mentioned instances, Options were sold, premiums were credited to show credit balance. Subsequently, payout was made for Rs. 50,000 on October 07, 2015. Further, credit arising out of sale of options have enabled them to take fresh positions without insisting for pay-ins. In this regard, Noticee has submitted that the pay-out of Rs. 50,000/- to Mr. Bhupatlal Sheth was on account of dividend received on shares of Reliance Industries Ltd. Further, it was submitted that fresh positions in options contracts were allowed as there was adequate margin to allow such transactions. From the SOA of Mr. Bhupatlal Jivanlal Sheth, I note that the client had received payment (claimed to be dividend payment by the Noticee) of Rs. 50,000 on June 15, 2015 which got adjusted against the debit balance of Rs. 13,12,030.64 existing in client's account prior to that date. Hence, after the adjustment of the said amount against the debit balance, the Noticee cannot claim to have released a payout of the same amount as dividend. I also note that the client had a debit balance of Rs. 1,64,582.03 on October 06, 2015. It was only pursuant to selling of options, the clients account showed a credit balance on October 07, 2015 which allowed the Noticee to release a payout. Further, from the

SOA, it is also observed that while the client had debit balances, fresh positions were taken without seeking pay-ins and instead Delayed Payment Charges were levied in the client's account. Therefore, I do not find merit in the above contentions of the Noticee.

104. As mentioned above, it is observed from SOA (Annexure G in Annexure X to SSCN) that in the following instances, though there were not enough credit balances available in the accounts of the concerned clients, payouts (which are stated to be profit payouts, as mentioned in preceding paragraphs) were made to the clients through the premium realized by selling of options.

Table - 19

Name of the Investor	**Date**	**Balance before payout as per SOA ("-" minus indicate credit balance)**	**Credit entry indicating net premium on sale of options after setting off buys and expenses**	**Balance after sale of Options ("-" minus indicate credit balance)**	**Payout stated as profit payout**	**Date of payout**
Kamlesh Mody	02-Jun-14	-2,55,780.63	8,45,173.52	-11,00,954.15	5,00,000.00	02-Jun-14
Kamlesh Mody	01-Aug-14	4,85,429.50	14,06,709.52	-9,21,280.02	4,68,000.00	01-Aug-14
Kamlesh Mody	09-Sep-14	18,03,962.10	25,03,419.05	-6,99,456.95	2,56,000.00	10-Sep-14
Kamlesh Mody HUF	03-Feb-15	18,77,536.46	23,79,939.90	-5,02,403.44	10,00,000.00	03-Feb-15
Mitali Mody	01-Aug-14	11,56,015.29	12,71,003.69	-1,14,988.40	3,88,000.00	01-Aug-14
Mitali Mody	10-Sep-14	12,43,872.37	21,27,743.23	-8,83,870.86	2,65,000.00	10-Sep-14
Mitali Mody	16-Mar-15	-1,58,544.81	32,25,727.16	-33,84,271.97	3,50,000.00	16-Mar-15
Rangraj Investments Pvt Ltd	01-Aug-14	-7,27,731.76	26,33,613.60	-33,61,345.36	21,50,000.00	01-Aug-14
Rangraj Investments Pvt Ltd	28-Aug-14	5,56,561.99	32,65,921.16	-27,09,359.17	18,25,000.00	01-Sep-14
Rangraj Investments Pvt Ltd	26-Sep-14	13,78,402.27	38,51,970.09	-24,73,567.82	16,45,000.00	30-Sep-14
Rangraj Investments Pvt Ltd	03-Nov-14	28,06,624.99	52,70,373.14	-24,63,748.15	23,68,000.00	03-Nov-14
Rangraj Investments Pvt Ltd	01-Dec-14	45,92,312.41	6946238.66	-23,53,926.25	13,20,000.00	02-Dec-14
Sonali Mody	01-Aug-14	-88,347.59	6,85,865.75	-7,74,213.34	4,12,000.00	01-Aug-14
Sonali Mody	09-Sep-14	10,99,766.10	19,62,440.16	-8,62,674.06	2,61,000.00	10-Sep-14

105. From the table above and the instances mentioned above, it can be observed that the payouts were not made out of profits generated in the last expiry period, but out of credit generated by selling of options for the next expiry period. By selling

options for the next expiry period, credit was created in the accounts of the Clients, which had hidden the loss/debit incurred in previous expiry period and payouts were made stating to be profit payouts out of such premium.

106. With regard to the above Noticee has contended that payments can be made to clients as and when demanded and possible, and these can be for various reasons inter alia including sale of securities in their account (whether at profits or losses), payment against credit balance in the account for various reasons including MTM credits, sale credit of option, release of margins, dividend credits etc. Further, Noticee has contended that in case of KTM investors also the payments were made for several of the above reasons and not only against profits and none of the payments have ever been correlated to profits as wrongly alleged. Further, with the following was submitted by the Noticee with regard to the KTM investors -

a. It was submitted that Mr. Kamlesh Mody had actually booked profits on transactions carried out by him in the month of May 2014 and June 2014 to the tune of Rs. 18.79 lakhs and only a part of the same was paid out to him. Further, it was submitted that likewise, Mr. Kamlesh Mody again earned profits to the tune of Rs. 7.29 lakhs from June 2014 and August 2014. Further, Noticee has submitted that as such the payout of Rs. 4.68 lakhs & Rs.2.56 lakh was made to him in August 2014 and September 2014. I note that the client had either debit balance or insufficient credit balance as per the SOA prior to the date of payout. It was only due to sell of options contracts and the corresponding premiums received in the client's account, that the client's account balance had sufficient credit balance and payout was effected. Thus, I do not find merit in the contentions of the Noticee.

b. It was submitted that Kamlesh Mody HUF wanted back the margin amount of Rs. 5,00,000/- paid by him in cash in December 2014 and as such a payout was effected, however instead of effecting a payout of Rs. 5,00,000/- they had marked a payout of Rs. 10,00,000/- and as such Kamlesh Mody HUF returned the excess payout Rs. 5,00,000/-. Further, it was submitted

that it was not a profit payout or even payout of Option Premium Credit. In this regard, I note that Kamlesh Mody HUF had a debit balace of Rs. 18.78 lakh prior to payout on 03-Feb-15 and received credit of Rs. 23.80 Lakh due to premium from option selling. A payout of Rs. 10 Lakh was done when the client had net debit balance of Rs. 5.02 Lakh.

c. It was submitted that Mitali Mody had earned profit of Rs. 3.76 lakhs in July 2014. Further, it was submitted that the client also gained profit of Rs. 29,67,095.45 till 09/09/2014 and as such payout of Rs. 3.88 lakhs and Rs. 2.65 lakhs were paid out to Ms. Mitali Mody in August 2014 and September 2014. Further it was submitted that payout of Rs. 3.5 lakhs was effected basis the sale consideration received through sale of shares effected by Ms. Mitali Mody on 12/03/2015. I note that the client had either debit balance or insufficient credit balance as per the SOA prior to the date of payout. It was only due to sell of options contracts and the corresponding premiums received in the client's account, that the client's account balance had sufficient credit balance and payout was effected. Thus, I do not find merit in the contentions of the Noticee.

d. It was submitted that Rangraj Investments Private Limited, had earned a profit to the tune of Rs. 1.45 crores during the months of May 2014 to October 2014 and payouts to the tune of Rs. 93.08 lakhs were made to the client from August 2014 to December 2014. I note that the client had either debit balance or insufficient credit balance as per the SOA prior to the date of payout. It was only due to sell of options contracts and the corresponding premiums received in the client's account, that the client's account balance had sufficient credit balance and payout was effected. Thus, I do not find merit in the contentions of the Noticee.

e. It was submitted that Sonali Mody had earned profits in the period prior to the payouts and in the month of July 2014, she had a profit of Rs. 2.99 lakhs and from August 2014 till 09/09/2014 she had booked profits to the tune of Rs. 3,83,180. Further, it was submitted that as such the payouts effected to Sonali Mody in the months of August 2014 and September 2014 are related

to profits earned by her. In this regard, I note that the client had either debit balance or insufficient credit balance as per the SOA prior to the date of payout. It was only due to sell of options contracts and the corresponding premiums received in the client's account, that the client's account balance had sufficient credit balance and payout was effected. Thus, I do not find merit in the contentions of the Noticee.

107. From the table above and the instances mentioned above, it can be observed that the payouts were not made out of profits generated in the last expiry period, but out of credit generated by selling of options for the next expiry period. I note that by selling options for the next expiry period, credit was created in the accounts of the Clients, which had hidden the loss/debit incurred in previous expiry period and payouts were made stating to be profit payouts out of such premium.

108. I note that such sale of options had contributed to major losses in a few expiry periods, though a few of such contracts had resulted in profits. Few of the expiry date-wise major losses for KTM Investors and Mr. Luke are given below:

Table - 20

KTM Investors		**Alexander Luke**	
Expiry date	**Apprx. Losses wrt contracts expiring in that expiry period**	**Expiry date**	**Losses wrt contracts expiring in that expiry period**
24-12-2014	-3,24,84,685.00	29-08-2013	-55,33,977.50
29-01-2015	-2,13,81,899.25	24-12-2014	-77,41,226.25
30-04-2015	-1,14,65,031.75	27-08-2015	-51,85,375.25
27-08-2015	-2,60,42,492.75	24-09-2015	-43,92,354.00
24-09-2015	-2,05,25,722.75	26-11-2015	-42,85,021.50

109. Overall, loss made by the KTM Investors for FY 2014-15 and 2015-16, as per summation of Profit and Loss Statement - Client Global Net Outstanding (Options Closing) Arbitrage Position (excluding Delayed and Late Pay-in charges) was around Rs. 4.15 crores and Rs. 5.70 crores respectively and for Mr. Luke was around Rs. 37.64 Lakhs and Rs. 1.95 crores respectively.

110. I note that as mentioned above, whenever there are debit balances in the client's ledger due to losses in the previous expiry period, ABML has not informed the clients about such losses, nor insisted for pay-ins from clients for subsequent positions. ABML had sold Options on behalf of the investors for the next expiry periods and credited premium to the accounts of these investors. Out of such premium credited to their account, payouts were made stating to be profit payouts (as mentioned in emails and statement handed over by Mr. Hemant Thukral), although during those periods losses were incurred and further, additional positions were taken. It is also observed that what started as risk free option strategy or covered contract with minimum losses, soon lost its basic ingredients, i.e., covered position and became very open i.e. either long position is huge or vice versa which left the option contracts vulnerable for huge losses.

111. The Noticee has contended that it is incorrect to mention that the clients were not informed about losses and that the clients had received profit and loss accounts regularly which are duly acknowledged by them. Further, Noticee has submitted that pay-ins were not necessary as the requirements of margin collection were always met and shares were sold from time to time and all additional positions were taken in compliance with margin requirements and no fault can be found with them. Further, Noticee has submitted that as regards to the strategy it is for the clients to decide what strategy to implement and what to reject and ABML cannot be held responsible for it and losses and profits may happen and the same are acknowledged by them from time to time. In this regard, I note that as stated previously, the trades were broker driven and executed based on the strategy designed by the Noticee and clients had played only a passive role. Further, I note that various reports/statements were provided to the investors claiming to be profit and loss statements which were at variance with the actual positions and had understated losses and shown fictitious/overstated profits. These misleading positions/misstatements to the clients by ABML, distorted the actual position. Therefore, I do not find merits in the above contentions of the Noticee.

112. Admittedly, these clients gave securities as a collateral for their accounts, however when these accounts are making losses, the security offered acted as a buffer for margin payment and to set off the losses in the account. I note that once this buffer is withered away, the clients had no securities left to fall back on.

113. This strategy had resulted in hiding the losses from the investors (as the debit balances in their account were set off against the premium on options sold) or roll it over to next expiry period and made the investors continue to accept the recommendations of the ABML and allow ABML to continue trading on their behalf, which had only resulted in the Noticee continuously earning brokerage and revenue through Delayed Payment and Late pay-in charges. Thus, ABML had not exercised due skill, care and diligence by allowing this practice while dealing with the investors. This fraudulent and unfair strategy had resulted in heavy losses to the investors. Noticee has contended that Brokerage and Delayed Payment Charges are levied based on pre-agreed terms and cannot be found fault with as the transactions were done only after the clients consent and not before. However, I find the said contentions to be untenable as the entire strategy of trading was deviced by the Noticee and the clients had played a passive role.

114. In view of the above, I find that the Noticee has violated the provisions of Regulation 3 and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and Clauses A(1), A(2) and A(5) of Code of Conduct of Schedule II read with Regulation 9 SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.

D. Delayed pay- in and Late Pay-in charges levied by ABML:

Findings of SI and JI

115. Apart from the brokerage, it is observed that ABML was charging Delayed payment charges w.r.t the Debit Balances of the clients @ 23% p.a. on weekly/fortnightly basis. It is also observed that for FY 2015-16, apart from delayed

payment charges, “Late Pay-in for F&O Exposure” charges were also charged for same periods. For example, in the account of Ms. Leena Mody for 2015-16:

Table - 21

Date	Description / Narration	Dr. Amount
14-Jul-15	Being Delayed Payment Charges For The Period 07.07.15 To 13.07.15	269.19
16-Jul-15	Being Late Pay-in For F&o Exposure For The Period 30-jun-15 To 15-jul-15	1,54,146.03
21-Jul-15	Being Delayed Payment Charges For The Period 14.07.15 To 20.07.15	1,773.22
31-Jul-15	Being Late Pay-in For F&o Exposure For The Period 16-jul-15 To 30-jul-15	1,12,205.39
31-Jul-15	Being Delayed Payment Charges For The Period 21.07.15 To 30.07.15	6,774.36
17-Aug-15	Being Late Pay-in For F&o Exposure For The Period 31-jul-15 To 14-aug-15	1,42,742.29
31-Aug-15	Being Late Pay-in For F&o Exposure For The Period 15-aug-15 To 30-aug-15	90,208.82
31-Aug-15	Being Delayed Payment Charges For The Period 25.08.15 To 30.08.15	25,881.57
08-Sep-15	Being Delayed Payment Charges For The Period 31.08.15 To 07.09.15	47,794.93
15-Sep-15	Being Delayed Payment Charges For The Period 08.09.15 To 14.09.15	46,037.36
16-Sep-15	Being Late Pay-in For F&o Exposure For The Period 31-aug-15 To 15-sep-15	1,04,424.26
22-Sep-15	Being Delayed Payment Charges For The Period 15.09.15 To 21.09.15	52,283.77
30-Sep-15	Being Late Pay-in For F&o Exposure For The Period 16-sep-15 To 29-sep-15	78,093.30
30-Sep-15	Being Delayed Payment Charges For The Period 22.09.15 To 29.09.15	75,367.83
06-Oct-15	Being Delayed Payment Charges For The Period 30.09.15 To 05.10.15	60,995.70
13-Oct-15	Being Delayed Payment Charges For The Period 06.10.2015 To 12.10.2015	38,777.66
16-Oct-15	Being Late Pay-in For F&o Exposure For The Period 30-sep-15 To 15-oct-15	91,704.24

116. It is also observed that the total of such charges levied for KTM Investors and Mr. Alexander Luke for FY 2014-17 were as follows:

Table - 22

Name of the Investor	FY 2014-15	FY 2015-16		FY 2016-17
	Delayed pay-in (Rs.)	Delayed pay-in (Rs.)	Late Pay-in (F&O Exposure) (Rs.)	Delayed pay-in (Rs.)
Kamlesh Thakorlal Mody	1,75,431.40	8,82,312.99	3,78,802.40	5,21,675.83
Kamlesh Thakorlal Mody Huf	28,019.30	3,67,957.13	1,79,585.47	2,13,702.18
Leena Kamlesh Mody	3,38,468.15	34,23,401.10	18,11,825.00	20,34,453.30
Mitali Kamlesh Mody	2,05,665.83	7,52,277.86	3,74,608.33	4,55,235.44
Rangraj Investments Pvt Ltd	5,12,716.18	33,13,475.51	6,53,225.61	9,37,209.60

Sonali Kamlesh Mody	1,42,861.95	5,09,768.90	2,18,619.11	2,77,997.25
Total for KTM Investors	14,03,162.81	92,49,193.49	36,16,665.92	44,40,273.60
Alexander Koipuram Luke	3,42,971.21	2,67,949.07	8,15,738.00	4,32,109.12 +Late pay-in 57,940.59

117. During inspection, on Query to ABML regarding the nature of these charges, ABML has stated that following charges were levied to all customers wherever applicable:

1. Delayed Payment Charges / Late Payin Charges / LPI / Late Payment Charges (currently renamed as Interest)

2. Late Payin for F&O Exposure (currently renamed as Interest on Margin Obligation)

118. Delayed Payment Charges are calculated @ 23% on the overall debit balances in a customer's trading account ledger (statement of accounts). Late Payin for F&O Exposure is charged @23% on non-maintenance of cash to collateral ratio of 20:80 by the respective clients. It was stated by ABML that the said charges are charged as agreed by the clients. Client consent was received through Voluntary Clauses Agreement / Additional Rights and Obligations. It is also stated that some customers are charged Delayed Payment Charges and / or Late Payin for F&O Exposure at a reduced rate on the basis of various parameters including trading volumes, background etc.

119. On perusal of the “Voluntary Clauses’” Agreement, it is noted that in “Breach/Default/Death/Insolvency” section it is stated that the Client is liable to pay, from the respective due dates of payments, interest at the rate of 24% p.a. on all the amounts due to the member.

120. It is observed that Late Pay-in for F&O Exposure was being charged suddenly during 2015-16. Though ABML claimed that Late Payin for F&O Exposure is charged @23% on the non- maintenance of cash to collateral ratio of 20:80 by the respective clients, they could not produce any document evidencing specific consent from the investors for charging the same, during the inspection. ABML has only stated that the clients consent was received through Voluntary Clauses Agreement / Additional Rights and Obligations. However, the charges in total i.e. (Delayed pay-in plus late pay-in for F&O Exposure) were in excess of the rate of interest i.e., 24% p.a. on debit balances, which the customers agreed for.

121. Noticee has contended that the Delayed pay-in charges and Late pay-in charges are levied as per the agreement / understanding / consent of clients. Further, Noticee has submitted that as per NSE portal, atleast 50% of the effective deposits should be in the form of cash i.e. even if approved demat securities are deposited with the Exchange, atleast 50% value of the securities ought to be deposited in the form of cash, however both KTM investors and Mr. Luke had predominantly provided securities to meet their margin requirements. Further, Noticee submitted that whenever there is a shortfall in cash margin component they had to place the same with Exchange even if the same was not paid by the KTM investors or Mr. Luke and as they were borrowing the funds and placing the same with Exchanges through Clearing Member, they charge interest on 20% cash component shortfall instead of 50% cash component shortfall of margins payable on futures and options positions. In this regard, I note that the Noticee had taken collateral as securities only and had not taken the requisite amount of cash. Further, it is reiterated that all the trades were broker driven wherein the clients had a passive role to play. The broker was placing orders in new contracts and allowing further exposure without seeking pay-in from the clients.

122. It is observed from SOA (Annexure G in Annexure X to SSCN) that in the following instances, ABML has made payouts (which were stated to be profit payouts, as mentioned in preceding paragraphs) to the clients. Immediately, a few

weeks after the same, delayed payment charges /Late Pay-in for F&O Exposure were charged. Even, NSE has charged penalty for Margin Shortfall in few cases. Several such instances are tabulated below –

Table - 23

Name of the Investor	Date of Payout	Payout stated as profit payout	Date when charges levied	Charges	Type of charges
Kamlesh Mody	02-Jun-14	5,00,000.00	16-Jun-14	146.35	Delayed pay-in
Kamlesh Mody	01-Aug-14	4,08,000.00	11-Aug-14	770.54	Delayed pay-in
Kamlesh Mody	30-Dec-14	7,00,000.00	31-Dec-14	16,897.57	Delayed pay-in
Kamlesh Mody	16-Mar-15	3,50,000.00	17-Mar-15	576.88	Delayed pay-in
Kamlesh Mody	23-Oct-15	5,10,000.00	31-Oct-15	22,530.34	Late Pay-in for F&O Exposure
Kamlesh Mody HUF	16-Mar-15	3,20,000.00	17-Mar-15	666.86	Delayed pay-in
Kamlesh Mody HUF	21-May-15	5,50,000.00	30-May-15	746.73	Late Pay-in for F&O Exposure
Kamlesh Mody HUF	03-Jun-15	7,50,000.00	16-Jun-15	13,099.75	Late Pay-in for F&O Exposure
Kamlesh Mody HUF	_	_	30-Jun-15	13,560.66	Late Pay-in for F&O Exposure
Kamlesh Mody HUF	03-Aug-15	4,18,000.00	17-Aug-15	10,616.26	Late Pay-in for F&O Exposure
Kamlesh Mody HUF	_	_	31-Aug-15	6,989.40	Late Pay-in for F&O Exposure
Kamlesh Mody HUF	_	_	31-Aug-15	993.15	Delayed pay-in
Leena Mody	02-Dec-14	8,90,000.00	05-Dec-14	8,063.57	NSE Penalty
Leena Mody	_	_	08-Dec-14	13,938.49	Delayed pay-in
Leena Mody	15-Jan-15	5,50,000.00	23-Jan-15	12,524.38	NSE Penalty
Leena Mody	03-Feb-15	5,00,000.00	04-Feb-15	8,314.69	NSE Penalty
Leena Mody	_	_	05-Feb-15	1,363.76	NSE Penalty
Leena Mody	21-May-15	32,00,000.00	30-May-15	45,367.05	Late Pay-in for F&O Exposure
Leena Mody	03-Jun-15	29,50,000.00	16-Jun-15	1,70,455.41	Late Pay-in for F&O Exposure
Leena Mody	23-Oct-15	11,05,000.00	31-Oct-15	99,068.86	Late Pay-in for F&O Exposure
Leena Mody	30-Nov-15	21,00,000.00	16-Dec-15	1,01,020.97	Late Pay-in for F&O Exposure
Mitali Mody	27-Jun-14	4,50,000.00	30-Jun-14	1,776.25	Delayed pay-in
Rangraj Investments Pvt Ltd	01-Aug-14	21,50,000.00	25-Aug-14	1,078.20	Delayed pay-in
Rangraj Investments Pvt Ltd	_	_	30-Aug-14	849.49	Delayed pay-in

Rangraj Investments Pvt Ltd	01-Sep-14	18,25,000.00	08-Sep-14	1,832.49	Delayed pay-in
Rangraj Investments Pvt Ltd	_	_	15-Sep-14	1,027.57	Delayed pay-in
Rangraj Investments Pvt Ltd	03-Nov-14	23,68,000.00	11-Nov-14	5,305.67	Delayed pay-in
Rangraj Investments Pvt Ltd	02-Dec-14	13,20,000.00	08-Dec-14	11,354.46	Delayed pay-in
Sonali Mody	10-Sep-14	2,61,000.00	15-Sep-14	862.12	Delayed pay-in
Sonali Mody	16-Mar-15	3,20,000.00	17-Mar-15	555.66	Delayed pay-in
Sonali Mody	05-Jun-15	1,45,000.00	16-Jun-15	14,851.74	Late Pay-in for F&O Exposure
Sonali Mody	30-Jun-15	3,50,000.00	16-Jul-15	13,768.66	Late Pay-in for F&O Exposure
Sonali Mody	03-Aug-15	3,67,000.00	17-Aug-15	15,947.90	Late Pay-in for F&O Exposure

123. The above analysis shows that, on one hand, ABML makes pay-out (mostly on monthly basis) which are stated to be profit payouts in emails (when there was no actual profits) and on the other, within a few days, ABML charges the clients Delayed pay-in charges and Late pay-in for further exposure for the clients. I note that on somedays such pay-outs have resulted in NSE charging penalty for Shortfall in Margins.

124. Noticee has contended that the delayed payin charges or late payin charges are not due to payouts effected in the account of the respective KTM investors but due to debits arising out of losses sustained by the customers on transactions post payouts or due to shortfall in margins on positions availed by them post payouts. However, I note that Noticee has not sought pay-in from the clients and only had the client securities as collateral. The Noticee was allowing further exposure to the clients without seeking pay-in from the clients.

125. All the decisions regarding this scheme of things were taken by ABML - the decision to make such payouts and not to retain the same (may be to meet out the promised profits to the clients), decision to take positions on behalf of the clients (each of the transactions were initiated by ABML, for which clients consent was obtained post trades), without seeking additional pay-ins from the clients and the decision to charge Delayed pay-in and Late pay-in for F&O Exposure to the clients.

ABML has gained substantial sums as mentioned above in the form of these charges, whereas their clients were making losses.

126. Noticee has contended that decision to effect payout were not taken by ABML and the transactions were not initiated by ABML without prior consent of clients. However, in this regard, I note that as established earlier the trades were broker driven and executed based on the strategy designed by the Noticee and clients had played only a passive role. The confirmations from clients were sought post execution of the trades.

127. Further as mentioned above, by initiating trades on behalf of the client continuously without obtaining their prior consent, the stock broker has earned substantial sum as brokerage and other charges namely, Delayed payments and Late Payment Charges. The total brokerage and Delayed (payment/payin) and Late Charges charged from the said clients' Financial Year wise are as follows –

Table - 24

	Delayed Payment and Late Pay-in charges (Rs.)		**Total Brokerage Charge (Rs.)**	
FY	**Aggregate for KTM Investors**	**Mr.Luke**	**Aggregate for KTM Investors**	**Mr.Luke**
2014-15	14,03,162.81	3,42,971.21	1,09,86,027.00	41,38,607.00
2015-16	1,28,65,859.41	10,83,687.07	49,09,311.00	12,77,514.80
2016-17	44,40,273.60	4,90,049.71	1,39,037.70	3,33,466.62

128. From the above findings, it is observed that ABML has executed the transactions on behalf of the clients, by encouraging them to deal in securities, with the object of enhancing their brokerage and other charges, which is in violations of Regulation 4 (2) (o) of SEBI (Prevention of Fraudulent and Unfair Trade Practices) Regulations, 2003.

129. I note that it is alleged by the KTM Investors that despite repeated assurances from ABML representatives vide emails, that delayed payment charges and margin

shortfalls would be reversed no such reversals were made in the ledger accounts of the KTM investors. ABML had stated that the allegations, that Company employees agreed to resolve the problems pertaining to reversal of delayed payment charges, margin shortfalls, immediate payment of dividends accrued on shares and reversal of wrongful debit entries, are against the facts and are denied. However, the same is not observed to be true.

130. It is observed that, vide email dated 02/01/2015, Mr. Hemant Thukral replied to Mr. Kamlesh Mody that '*we will make a note of all this penalty and delayed payment charges, and get it reversed*' and further vide another email dated 06/02/2015, and further vide another email dated 06/02/2015 from Mr. Hemant Thukral to Kamlesh Mody and Mr. Vishal Muni (employee of Noticee) the following is stated– "*Vishal, Immediately make a list of all delayed payment charges, in all accounts of sir, It will reversed within one week. Regards Hemant Thukral*". However, it is found that no such charges were reversed. (Annexure D – Email XIII in Annexure X to SSCN). In this regard, I note that if the delayed payment charges were legitimate then there was no need for the Noticee / its employee to assure the clients that delayed pay-in charges will be reversed. Therefore, I do not find any merit in the above contentions of the Noticee.

131. Noticee has contended that KTM investors were aware of delayed payments charges getting levied from inception. Further, the Noticee has submitted that the very fact that they have requested for reversal of delayed payment charges would go to clearly prove that they did not induce KTM investors to trade. In this regard, I find that requesting for reversal of delayed payment charges does in no way indicates that Noticee did not induce KTM investors to trade and I find the said contention to be without merits.

132. Thus, based on the above findings, I hold that ABML is in violation of Clause (B) (4) (a) and (b) of Code of Conduct of Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 and Regulation 4 (2) (l) and

(o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

E. Lack of adequate systems and internal controls:

Findings of SI

133. As can be seen from the findings above, I note that Mr. Hemant Thukral, Head of Technical Research and Derivatives of ABML, played a major role in the entire scheme of things, be it approaching the clients having high value shares, advising them to join the scheme whereby shares of the clients were given as collateral, providing recommendations regarding trades or managing their accounts on their behalf. He along with his team was providing statements, other than what is statutorily required to be provided by the Broker and such other statements which were misleading and not providing the actual position to the clients. He was instructing release of payouts to the clients, which are stated to be profit pay-outs, wherein the clients were actually incurring losses at that time. I note that Noticee has contended that payouts were done only when the same were eligible to be withdrawn and the clients had Mark to Market debits which were met with stocks. In this regard, I note that as established previously, the losses of the clients were covered by premium on sale of options and shown only at later stages. Thus, I find no merit in the contentions of the Noticee.

134. I note that the Noticee has contended that KTM investors and Mr. Luke wanted statements in their own way and documents were shared with them basis their requests. Further, Noticee has contended that no misleading statements were provided. In this regard, it is reiterated that the broker is not expected to send any customized report to its clients the way that has been strangely argued by the Noticees. Though the client might have demanded certain statements in a specific fashion and design however, it is not obligatory on a stock broker simpliciter to accommodate such request unless it is warranted by law. By the above conduct the Noticee stands to prove again that its relationship with the clients is just not that of a broker and a client and it is something beyond that. For the above reasons I

tend to disagree with the arguments advanced by the Noticee taking shelter under the garb of client approvals or authorizations. Further, I note that the IGRP of NSE in their hearing dated October 18, 2016 in the matter of Complaint of Mr. Alexander Luke inter-alia stated as follows:

"It is still a puzzle as to why a senior officer like Mr. Thukral was running a parallel reporting mechanism sending alternative profit statements to the complainant with special markings of profit figures in an extended column. The claim, of the TM alleging that such irregular reports (i.e "scenarios" as termed by the TM) are churned only at the behest of the complainant- and with details given by the complainant doesn't hold organizations like ABML in good stead in the eyes of the public."

135. The Noticee has contended that the IGRP members preferred to dismiss the claims of Mr. Luke in light of the merits in their submissions. In this regard, it is reiterated that the complaint of Mr. Luke was not dismissed as there were arguments and counter arguments and since no amicable settlement could be arrived, IGRP have advised the parties to go for further course of action as they deem fit and as contemplated under the exchange regulations. I note that IGRP did not find the complaint to be baseless. Thus, I find no merit in the above contention of the Noticee. Further, Noticee has submitted that research recommendations have been disseminated to KTM investors and Mr. Luke before orders are placed. Further, it was submitted that as soon as an order is placed both KTM investors as well as Mr. Luke were served with SMS containing the order details and if they are not in agreement with the order they could have called the Noticee to object or cancel the order/trade. In this regard, I note that the trading strategy was designed by the Noticee and further, it is reiterated that the trades were broker driven and the clients had a passive role to play. Further, I note that clients' acceptance cannot be a defense and is more of a formality in such situations. Thus, I find no merit in the above contentions of the Noticee.

136. Further, it is observed that in some of the contracts, whole or substantial open interest positions were held by these clients, due to the trades executed by ABML on behalf of these clients. For example, for the Client- Rangraj Investments Private Limited, Put Option for Infosys Stock for exercise date 24/12/2014 was Sold for the said client in Strike Price of 2350 (Quantity–58000). It was observed from NSE website, the open position for the said contracts as on December 02, 2014 was 61,000 and the positions taken on behalf of Rangraj Investments Private Limited, was around 95% of the total outstanding positions in the market. The net loss with respect to said contract was around (-Rs.1,10,26,772.50). Similarly, in the same expiry date, Put Option for Infosys Stock sold in Strike Price of 2400. The entire market open position for the said contract (32,250 Qty) on 02/12/2014 was taken on behalf of Rangraj Investments Private Limited. The net loss in his account wrt said contract was (-Rs.56,23,945.00). It is reiterated all the trading decisions for these clients were taken by Mr. Hemant Thukral and his team. Noticee has contended that the entire position was backed by holdings of equal amount of shares of Infosys and effectively it was a covered call writing strategy implemented which was very successful and resulted in a profit of Rs. 1.35 crores during the period May 2014 to November 2014. I note that in the above example, the client's position in Put Option contracts for expiry date 24/12/2014 and strike price of Rs. 2350 was around 95% of the total outstanding open position in the entire market for the contract on December 02, 2014, and the client suffered a net loss of Rs. 1.10 crore. Similarly, the net loss in the contract with expiry date 24/12/2014 and strike price of Rs. 2350 was Rs.56.24 Lakh and the client's position in the said contract was 100% of the entire market open position. Thus, I find no merit in the contention of the Noticee that client made a profit of Rs. 1.35 crore during the previous period i.e. May 2014 to November 2014.

137. It is further observed that Mr. Hemant Thukral has also traded in Options segment through ABML during the said periods. During inspection, information regarding internal policy of ABML regarding trading of their employees were sought from ABML. It is alleged that ABML has only provided policy with respect to dealing

in the scrips of ABML which happens to be a listed company. On analysis of trading patterns of Mr. Hemant Thukral viz-a-viz the trading positions taken on behalf of the clients of ABML, it is observed that for the same expiry date, positions were taken for clients on introduction of new contracts whereas Mr. Hemant Thukral's positions were taken on dates closer to the expiry period. Further, it is observed that while trading in his account, Mr. Hemant Thukral made conservative decisions, whereas for trading in clients account, he took positions of deep in the money and deep out of the money in Option Contracts, which had resulted in huge losses to the clients, as mentioned in the previous paragraphs. Comparison of trades of Mr. Hemant Thukral with Luke and KTM Investors and profits/loss in such transactions for the expiry periods (24-12-2014,29-01-2015,30-04-2015,27-08-2015 and 24-09-2015) in which KTM Investors and Mr. Luke had incurred huge losses are given in Annexure X in Annexure X of SSCN. In this regard, Noticee has contended that Mr. Hemant Thukral also sustained losses and did not make profit out of client losses. Further, it was submitted that Mr. Hemant Thukral did not take a contrarian position. In this regard, it is noted that Mr. Hemant Thukral made conservative decisions in his own account, whereas for clients' accounts he took positions in deep in the money and deep out of the money option contracts. To this extent the trading views were contradictory. Thus, I do not find merit in the contentions of the Noticees. Further, during inspection on inquiry regarding the compensation structure of Mr. Hemant Thukral, ABML has stated that Mr. Hemant Thukral was paid fixed compensation in the form of salary and variable pay on the basis of strike rate of positive recommendation of the calls given by him. It may be noted that, as mentioned in above findings, the trades were executed for the clients on the basis of instructions/recommendations of the Mr. Hemant Thukral. Thus, there is a conflict of interest wherein Hemant Thukral is making recommendations and causing to execute trades on behalf of clients, without taking into account the interest of the clients and subordinating the client's interest for his own. I note that the above-mentioned findings may be the reason for Mr. Hemant Thukral to hide the losses from the clients by sending misleading and incorrect statements so that

they continue to trade and thus, while he and Noticee continues to be benefited, the clients were left with huge losses.

138. It is to be noted that aforesaid happenings are not a one-off event by ABML, but are of repetitions. Summary of action taken by SEBI in previous instance and IGRP Proceedings against ABML alleging similar violations are listed below:

i. SEBI inspection of ABML and order for violations in Option Maxima Strategy:

139. *It was found during the earlier SEBI Inspection that during the year 2010-11, ABML had operated Options Maxima Strategy in which Short Strangle (also known as Sell Strangle), was recommended to the clients. This particular option strategy was marketed as "limited profit – unlimited risk" strategy that is taken, when the option trader thinks that the underlying security will experience little volatility in the near term. It was observed that 640 clients had availed this strategy. During the month of September 2010, Client's positions in the strategy showed a high amount of Mark to Market losses due to unidirectional and rapid upward movement of the NIFTY index. This resulted in losses to the tune of Rs.103.24 crores. It was also observed that ABML had compensated the clients for the said loss.*

140. *On analysis of the terms and conditions of Options Maxima Strategy, it was found that ABML had managed a discretionary account for and on behalf of clients who are registered in "Option Maxima" strategy and had rendered the portfolio management services to their clients in violation of Section 12 of the SEBI Act read with clauses A (3) and A (5) of Code of Conduct for brokers specified in Schedule II read with Regulation 9 of the Brokers Regulations. In the said case, Adjudication was initiated by SEBI and Adjudicating officer of SEBI had levied monetary penalty of Rs. 10,00,000/-vide order dated November 23, 2017.*

141. The Noticee has submitted that Option Maxima took place in financial year 2010 – 11 and they had denied all the allegations cast upon them by SEBI. Further, the Noticee has contended that the matter continued for 6 years after which SEBI

imposed a penalty of Rs. 10 lakhs which was paid without admission of guilt. In this regard, I note that in the above matter, the Noticee was rendering portfolio management services to its clients and was placing orders in the options segment based upon the strategy of the Noticee and according to the strategy, all decisions were taken by the Noticee. Thus, I note that the Noticee had engaged in similar violations before also

ii. IGRP Proceedings of Alvittas Electricals Pvt Ltd:

142. *It was observed that in the IGRP Proceedings, the said entity (Alvittas) alleged the following : They have opened the account with ABML only for arbitrage trading for the cash to future, reverse cash and box arbitrage in options. However, it had found that many naked positions were taken by ABML, ABML had concealed huge losses, positions were taken without any corresponding protective buying of call and put options. The said trades were done without adhering to their instructions and hence, not authorized. Hence, it had incurred loss of Rs.104 lakhs. ABML denied all the charges. NSE IGRP vide its Order dated April 27, 2015 observed that after long negotiations, both parties agreed and arrived at a settlement sum of Rs.50 Lakhs to be paid by ABML to Alvittas.*

iii. Arbitration proceedings of ESPL Systems Private Limited:

143. *The applicant had alleged the following: Hemant Thukral and other person had visited him and stated that they will invest in option called, 'strategy in Future' and would generate a return of 12%-15%. Hemant Thukral also stated that the applicant can give some shares of good companies as collateral and that the applicant (ESPL) need not make any decision and the respondent (ABML) will take the call. The claimant required to confirm those calls to call center who call the claimant for confirmation. The applicant was assured monthly statement of account. The applicant gave cheque for Rs. 12 lakh and transferred 2000 reliance shares to the respondent demat account. Everything was going fine for some time and one day he received a sms stating that Rs.4,00,000 as loss and this loss*

increased to Rs. 8 lakh in May 03, 2012. Thukral stated that losses were on account of errors by his department in doing trades in Delhi.

144. *ABML denied all the allegation and stated that it had sent SoA, contract notes to the applicant and had played some audio conversation between the applicant and the dealer. The arbitrator had asked how the order was placed and ABML could not submit any proof for the same. Hence, Arbitrator stated that since it could not produce any evidence for the order placement by the applicant and showed only selected conversation, the orders were not being placed by the claimant and allowed claim of 50%. Further, Arbitrator Ordered that the claim amount admitted was Rs. 4,02,286.50 and interest, @10%p.a on the said amount from the date dispute filed with NSE till final payment, shall be made.*

iv. Arbitration proceedings of Ms. Vaz:

145. *The applicant had alleged the following: In October 2013, employees of ABML approached and assured her (oral assurance) of generating 18%to 20% p.a return on her existing holding of shares in demat account without affecting her holding. During Feb/march 2014 she came to know of huge losses in her account and wanted to quit. However, Hemant Thukral, informed her that he was fine tuning the strategy so that things would turn around and losses were due to errors of Bangalore Branch and that her account was transferred to Mumbai under the direct supervision of Hemanth Thukral. But losses continued. On October 20, 2014, Thukral assured her that no brokerage will be charged till the losses were recouped. But the applicant stopped trading. She claimed that her loss was Rs. 57,35,414 from ABML for trading in F&O segment between 09/01/2014 and 20/10/2014. But ABML denied all the allegation and stated that the client was sent SMS, SOA, Contract Note, Debit Balances in her account etc. Arbitrators did not admit the claim of the applicant, since she could not produce any evidence for her claims and also she had taken a pay out of Rs. 9,90,000/- on May 23, 2014. The arbitral panel had dismissed her claim.*

146. From all the above, it is evident that there had been repeated violations/complaints against ABML on similar lines and ABML does not seem to have improved their systems and controls since then and continued with such practice. The *modus operandi* has been constantly followed by the Noticee despite past incidents.

147. Thus, by not having adequate systems and internal controls to ensure due skill, care and diligence in conduct of all its business and in dealing with their clients, ABML has violated Clause (A) (1) and (A) (2) of Code of Conduct mentioned in Schedule II read with Regulation 9 SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.

Findings of JI

148. During inspection, it was observed that Noticee had assigned dedicated terminals such as for research, broking, PMS, Non-Discretionary Portfolio Management Service, backup for both PMS etc. (list of Computer-To-Computer-Link network terminals were submitted by broker) and for execution of trades of clients falling under respective categories. SEBI sought information from NSE w.r.t trades executed through terminals assigned for PMS clients by Noticee. On perusal of the data received from NSE, it was observed that trades of 46 individual/retail clients mentioned in Sample one were executed through above mentioned PMS terminals that were dedicated by Noticee exclusively to execute trades of clients availing PMS services.

149. Noticee has contended that purpose of each terminal was described to the inspecting officials and data was submitted during inspection by adding a column “segment” for each terminal. The Noticee has submitted that the delaration of the purpose of each terminal on the date of visit and not for historical transactions. Further, Noticee has contended that 3 of the clients, namely Madhu Rajesh Agrawal, Shashi Kuldeep Dawar and Sandeep Vasant Dadia were availing NDPMS (Non-Discretionary Portfolio Management Services) services. Further, Noticee

submitted that for the balance 43 clients it has submitted the letters from these clients confirming that their trades were not executed by Noticee at Noticeee's own discretion and that they have executed all the trades by themselves.

150. I note that the clasification of the terminals for the segment for which they were used was provided by the Noticee itself and the following CTCL were clasiified for the PMS segement – (i) CTCL id – 400063302005 (for NDPMS), (ii) CTCL id – 400063031101 (for 'Backup for both PMS'), and (iii) CTCL id – 400063031102 (for DPMS). The Noticee also classified several other terminals (8 nos.) as for segments like Broking and Research. I note that trades of 43 clients (i.e. barring 3 clients availing NDPMS services from the sample of 46 clients) who were not registered as PMS clients were executed from terminals meant for PMS clients.

151. In view of the above, I note the violation of own guidelines by Noticee and thereby a lack of adequate systems and internal controls. With regard to the letters/emails from clients stating that the orders placed in their account were initiated by them and executed as per their instructions which have been submitted by the Noticee, I note the same having identical content have been obtained by the Noticee post the findings of the inspection and hence are nothing but an afterthought. Further, considering the PMS services given by Noticee, to clients who were not registered as PMS clients and high number of instances of unauthorized trading and post trade confirmation taken from clients, as discussed previously, I note that Noticee did not have adequate systems and internal controls to ensure due skill, care and diligence in conduct of its business and dealing with their clients. As per Clauses A (1) and (2) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI (Stock-Broker) Regulations, 1992, a registered stock broker should maintain high standards of integrity, and exercise due skill and care, which was not done by Noticee. Thus, Noticee has violated Clauses (A)(1) and (A)(2) of Code of Conduct mentioned in Schedule II read with Regulation 9 SEBI (Stock Brokers) Regulations, 1992.

F. Non settlement of Funds and Securities of inactive clients

152. The amount of non settlement of inactive clients was typographically wrongly stated as Rs. 63,94,5432.85 in the SCN instead of actual amount of Rs. 63,94,543.85. During inspection, it was verified whether the clients' accounts were settled on monthly/quarterly basis as per preference given by the client, considering the ledger balances of clients across Exchanges/Segments and collaterals, cash maintained as margins with stock brokers against retention of client's obligation, cash market turnover & margin requirement. As per Clause 12e of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, a client may specifically authorize the stock broker to maintain a running account, provided that 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.

153. It was observed that unsettled fund balance worth Rs 26,66,395.28 in one sample of 56 inactive clients, wherein seven instances were either settled or not required to be settled.

154. In this regard, Noticee has stated they have settled the fund balance of clients amounting to Rs. 2,94,366.29 during the respective period. Further, Noticee has stated that for the remaining balance they were continuing their efforts to settle and were able to settle the funds of 18 clients amounting to Rs. 16,46,270.56. Further, Noticee has submitted that as regards the remaining 31 clients with unsettled balance of Rs. 7,25,758.43, they are still continuing their efforts to effect settlement however some of the clients have shifted their residence without any communication / update to them and the cheques sent to them are getting returned. I note that Noticee could settle the accounts of 18 clients amounting to Rs. 16,46,270.56, mostly by following up with the clients and getting their new or correct bank account. In one instance Noticee has contacted the legal heirs of the deceased client and effected payout. I note such steps have been undertaken by the Noticee only after SEBI communicated the inspection findings to the Noticee. Such steps could have been undertaken by the Noticee post the implementation of

SEBI circular dated December 03, 2009. To this extent, I find the Noticee has admittedly not settled the funds of inactive clients during the inspection period as mandated by SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and has violated the provisions of Clause 12e of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

155. The purpose of the requirement of the aforesaid SEBI circular is to ensure that the funds and securities of clients, especially the inactive clients, do not remain with the stock broker as idle balance and are not misused by the stock broker. Further, non settlement of funds and securities of inactive client by the Noticee exposes the system to unauthorized trading. The circular is intended to curb such possiblities. It is pertinent to note that the rationale for coming out with Circular dated December 3, 2009 by SEBI was to instill greater transparency and discipline in the dealings between the clients and the stock brokers, so as to avoid misuse of (a) client funds and securities and (b) running account authorisation, by stock brokers. In such scenario, the Noticee is expected to comply with the statutory requirements in totality.

156. Further, it was observed that in another sample of 56 inactive clients, there were unsettled securities worth Rs 37,28,147.57. In this regard, Noticee has submitted that based on FAQ of Exchanges vide circular dated 04.09.2019, client securities worth Rs. 28,90,096.40 which were held with them were disposed after giving 5 days notice and the sale proceeds were paid to respective clients. Further, Noticee has submitted that securities valued at Rs. 8,38,051 were not able to be settled due to reasons like securities not traded/suspended, Invalid PAN, and securities that could not be transferred due to non availability of ISIN in the Depository in which client has got demat account. The submissions of the Noticee in this regard are noted.

G. Delay in uploading client details in Central Know Your Client (CKYC) system

157. During inspection, the inspection team verified Account Opening Form (Blank) in accordance with provisions of KYC, implementation of KYC circulars etc. It was

observed that there was delay in uploading client details in CKYC system, for eight clients out of eight individual clients verified and the difference between UCC date and CKYC date ranged between 14 days and 177 days.

158. In this regard, Noticee has submitted that out of total 8 cases, details of 5 clients were already available with CKYC and there was no need for them to upload the data to CKYC as KYC details did not undergo any change. Further, Noticee has submitted that with respect to client code 1067714, the KYC details were uploaded within 2 days of opening of account, however the same was not successful due to mismatch of name with KYC and PAN website, and upon receipt of the name of the client as per PAN website from NSDL they immediately updated the KYC details with CKYC. Further, it was submitted that the said instance was prior to rectification of process of client name validation with PAN by CKYC and therefore there is no non-compliance at their end.

159. As regard client code 1020682, it was submitted that the account has been opened in 2013 i.e. prior to the date of implementation of CKYC and the details required for uploading the KYC details with CKYC was incomplete. Noticee has further submitted that after following up with client and upon receipt of the details, KYC details were immediately updated with CKYC. I note that admittedly there has been a delay in uploading of the said client's details in the CKYC. With respect to client code AL40130, Noticee has submitted that the client is a KRA verified client, basis which the trading account of the client was opened and since there was a delay in obtaining the KYC documents of the client from KRA, the upload of KYC details with CKYC was delayed. I note that Noticee has not explained any reason for delay in obtaining the KYC documents of the client from KRA. In view of the same, I note that there has been a delay in uploading of the said client's details in the CKYC.

I note that as per SEBI Circular ref no. CIR/MIRSD/66/2016 dated July 21, 2016, the registered intermediaries shall upload the KYC data with CKYCR, in respect of all individual accounts wherever KYC is required to be carried out as per the

circulars issued by SEBI from time to time, which was not done by Noticee. Thus, Noticee has violated SEBI Circular ref no. CIR/MIRSD/66/2016 dated July 21, 2016.

H. No dedicated E-mail id for redressal of grievances

160. During inspection it was verified whether there was dedicated E-mail id for redressal of grievances. The inspection team observed that broker did not have exclusive email id for the purpose of registering complaints by investors. Instead email ids dedicated by broker are being used for general communication and correspondence also.

161. In this regard, Noticee has submitted that as per SEBI ciruclar MRD/DoP/Dep/SE/Cir-22//06 dated December 18, 2006, they as a SEBI regsitered stock broker have a dedicated email id care.stocksandsecurities@adityabirlacapital.com alleged for the purpose of receiving complaints of broking clients. Further, Noticee has submitted that likewise they have dpcare.stocksandsecurities@adityabirlacapital.com for receiving and redressing complaints received from depository participant clients. Further, it was submitted that the said email ids are exclusively dedicated only to address the grievance/queries of the clients and not for any other purpose. As per Clause 4 of SEBI circular MRD/DoP/Dep/SE/Cir-22/06 Dated December 18, 2006, all registered brokers are advised to designate an e-mail ID of the grievance redressal division/compliance officer for the purpose of registering complaints by investor. However, it is observed during inspection that the email ids dedicated by broker for redressal of grievances were also used for general communication and correspondence. Thus, I find that Noticee has violated violated Clause 4 of SEBI circular MRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006.

I. SMS alert facility flag not enabled in the Depository Participant Module (DPM) and Power of Attorney (POA) activated without obtaining mobile number from the client

162. During inspection, documents executed for POA in favor of Stock Broker, Clauses of POA, Registration of BO for SMS Alert facility for POA etc were

examined. It was observed that in eight instances, SMS alert facility flag was not enabled in the DPM and in one instance POA was activated without obtaining mobile number from the client.

163. In this regard, Noticee has submitted that SMS alert facility flag was flagged in their LD DP Back office system for all the 50 instances however while transferring the data from the LD DP Back office to DPM, due to some technical glitches, the same was missed out for 8 clients. Further, it was submitted that the issue had been fixed and they ensure non-repetition of the same. I note that Noticee has admitted that in 8 instances SMS facilities were not enabled in DPM due to some technical glitches.

164. With regard to the observation that in one instance POA was activated without obtaining mobile number from the client, Noticee has submitted as follows – *"We would like to submit that the said demat account 1022852 is an additional demat account mapped to the trading account of the client. The POA was enabled based on the request received from the client. As a process any modification request will be initially updated to the back office CCM, which is a common platform wherein all the details of client will be available. As such while enabling the POA for the said client, the availability of mobile number was verified and the same was updated. The said modifications request was manually updated to the NSDL DPM, since the availability of mobile number was already verified in the LD CCM, the POA was enabled. However it is to be noted that the DPM didn't show any error message while enabling POA for the said demat id which was not updated with Mobile number. However we would like to submit that we have strengthened our process thereby ensuring non-repetition of the said observation."*. From the said submission, I note that Noticee has admitted the observation.

165. As per Point no 1.12 of SEBI Master Circular for Depositories SEBI/HO/MRD/DP/CIR/P/2016 /134 dated December 15, 2016, subscription to SMS Alert facility for depository accounts operated through POA is mandatory,

which was not done by Noticee. Thus, Noticee has violated Point no 1.12 of SEBI Master Circular for Depositories SEBI/HO/MRD/DP/CIR/P/2016/134 dated December 15, 2016.

J. In 160 instances, securities with value of Rs. 5,41,502.76 were transferred from client demat to pro account

166. During inspection, 160 instances were observed where securities valued at Rs. 5,41,502.76 were transferred from client demat to pro account. As per Clause 2 of SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993, brokers should keep separate accounts for client's securities with necessary details, and keep such books of accounts, as may be necessary, to distinguish from his/their own securities, which was not done by Noticee.

167. In this regard, Noticee has submitted that out of total value of Rs. 5,41,502.76, shares worth Rs. 2,38,086/- (involving 77 instances) were purchased on various occasions through their trading accounts for testing purpose and were lying to the credit of the company and as such, own securities worth Rs. 2.38 lakhs were transferred to their demat account (100013). Further, Noticee has submitted that withdrawal of of such securities is permitted under NSE CM Regulation 6.1.5 (f) which is quoted hereunder:

"

(i)…

(ii)…

(iii) Securities to be withdrawn from Constituents beneficiary account: No security shall be drawn from Constituents beneficiary account other than

A. when they are properly required, for delivery to or on behalf of Constituents, for or towards meeting the Constituents' margin or pay-in obligations;

B. what are drawn under Constituents' authority in respect of which there is a liability of Constituents to the Trading Member;

C. securities which by mistake or accident have been deposited into the account;"

168. From the above submission of the Noticee, I note that Noticee had purchased securities through trading accounts of clients for testing purpose. I note that trading member has admitted that they kept own securities in clients' demat account. Thus, Noticee has admittedly violated Clause 2 of SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993.

169. Further, Noticee has submitted that 7.98 crore Liquid Bees valued at about Rs. 7978.68 crores have been purchased on behalf of thousands of clients and the dividend on these liquid bees comes in 3 decimals and splitting them to the clients who own a small part of it is practically impossible. Noticee has further submitted that over a period of 16 years liquid bees worth Rs. 2,53,859/- (involving 8 instances), got accumulated in their account. Further, Noticee has submitted that due to impossibility of transferring fractions in 3rd decimal, they have moved them to their own account and are open to deal with it under the guidance of SEBI including depositing it to the investor protection fund if so directed. The submissions of the Noticee in this regard are noted.

170. Further, Noticee has submitted that shares worth Rs. 49,556/- (involving 44 instances), were received against the corporate action of shares placed as collateral by the clients in the Margin account and since the corporate action credit is received against the total quantity of shares placed by various clients held in the Margin account, these fractional shares could not be transferred to any one particular client. Noticee has submitted that they settled the value for the fraction shares in cash by crediting the equal value directly to the respective clients trading account. The submissions of the Noticee in this regard are noted.

Issue b) Whether the Noticee are liable for monetary penalty under Sections 15HA and 15HB of the SEBI Act, 1992 and Section 23D of SCRA, 1956?

171. I note that the Hon'ble Supreme Court of India in the matter of *SEBI vs. Shri Ram Mutual Fund* held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties*

committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."

172. Thus, the violations of provisions of Regulation 3(a) and Regulations 4(1), 4(2)(l), 4(2)(m), 4(2)(o) and 4(2)(p) of PFUTP Regulations makes the Noticee liable for penalty under Section 15HA of SEBI Act, 1992. Further, the violations of provisions of Regulation 14(1)(a) of PM Regulations, Clauses A (1), (2), (3), (5), B(4) (a) and (b) and B (7) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI (Stock-Broker) Regulations, 1992, Clause 12e of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, SEBI Circular ref no. CIR/MIRSD/66/2016 dated July 21, 2016, Clause 4 of SEBI circular MRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006, Point no. 1.12 of SEBI Master Circular for Depositories SEBI/HO/MRD/DP/CIR/P/2016 /134 dated December 15, 2016 by the Noticee makes it liable for penalty under Section 15HB of SEBI Act, 1992. Further, the violation of Clause 2 of SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993 makes the Noticee liable for penalty under Section 23D of SCRA, 1956.

173. The text of the provisions of Sections 15HA and 15HB of the SEBI Act, 1992 and Section 23D of SCRA, 1956 is reproduced below:

SEBI Act

Penalty for fraudulent and unfair trade practices.

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

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.*

SCRA, 1956

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

23D. *If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities*

or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

174. In this regard, the provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the SEBI Adjudication Rules and Section 23J of SCRA, 1956 and Rule 5 of SCR Adjudication Rules require that while adjudging the quantum of penalty, 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.

175. I find that the inspections have not quantified the amount of disproportionate gain or unfair advantages to the Noticees and loss caused to investors. Through various statement the Noticee has shown varying figures of profits / loss of its clients. The inspection team has not identified any amount of profit made or loss caused to the investors that can be used in the context as a mitigating factor. I note that the Noticee has violated the provisions of PM Regulations, PFUTP Regulations, Code of Conduct under the SEBI (Stock-Broker) Regulations, 1992 and SEBI circulars. Further, from the inspection report, I note that violations by the Noticee are repetitive in nature as evidenced from the various complaints, Adjudication Order, IGRP proceedings and Arbitration proceedings discussed previously in this order. To cite one, in the IGR proceedings in respect of Alvittas Electricals Pvt Ltd vide Order dated April 27, 2015 it was observed that the Noticee had paid a settlement sum of Rs. 50 Lakhs to Alvittas Electricals Pvt Ltd. However, I note that the same *modus operandi* has been constantly followed by the Noticee despite past incidents. Thus I note the violations to be of repetitive nature.

176. I note that the client, Mr. Alexander Luke has written several emails to SEBI regarding his complaint against the Noticee. In this regard, I note that the present

order is being passed under the adjudication proceedings against the Noticee for the violations of the securities laws, as discussed. I note that any remedy for investor complaints is not within the remit of the present proceedings. However, investors may find remedy elsewhere as per law.

ORDER

177. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of SEBI Act, 1992 and Section 23J of SCRA, 1956, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of SEBI Adjudication Rules, and Section 23-I of the SCRA read with Rule 5 of the SCR Adjudication Rules, hereby impose the following penalty on the Noticee viz. Aditya Birla Money Ltd

Noticee	**Under the Provisions of**	**Penalty**
Aditya Birla Money Ltd	Section 15HA of SEBI Act, 1992	Rs. 75,00,000 /- (Rupees Seventy Five Lakh Only)
	Section 15HB of SEBI Act, 1992	Rs. 25,00,000 /- (Rupees Twenty Five Lakh Only)
	Section 23D of SCRA, 1956	Rs. 2,00,000 /- (Rupees Two Five Lakh Only)
	Total	Rs. 1,02,00,000/- (Rupees One Crore and Two Lakh Only)

178. I am of the view that the said penalty is commensurate with the violations committed by the Noticee as discussed in this order.

179. The aforesaid Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or the online payment facility available on the website of SEBI, i.e., www.sebi.gov.inon the following path,

by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO ->PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

180. The aforesaid Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid to the Enforcement Department of SEBI (EFD-DRA-6). Noticee shall provide the following details while forwarding DD/payment information:

a) Name and PAN of the entity (Noticee)

b) Name of the case / matter

c) Purpose of Payment –Payment of penalty under AO proceedings

d) Bank Name and Account Number

e) Transaction Number

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

182. In terms of Rule 6 of the SEBI Adjudication Rules and Rule 6 of the SCR Adjudication Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai **K SARAVANAN**

Date: October 04, 2021 **ADJUDICATING OFFICER**