WTM/KV/MIRSD/MIRSD-SEC-3/30903/2024-25

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sub-section (3) of section 12 of the Securities and Exchange Board of India Act, 1992 read with regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of: -

Name of the *Noticee*	**PAN/Registration details**
Evermore Share Broking Private Limited (Erstwhile Evermore Commodity Brokers Private Limited)	**PAN: AAACE0199D** **Stock Broker (SEBI Registration No.: INZ000022431)**

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A. Background

1. Evermore Share Broking Private Limited (hereinafter referred to as "**Evermore / *Noticee***") is registered with Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") as a stock broker having registration no. INZ000022431.

2. SEBI had carried out inspection in respect of the *Noticee* during the period April 2021 to July 2022 (hereinafter referred to as "**Inspection Period"**) and made certain findings/observations during the course of inspection, which were communicated to the *Noticee* vide letter dated October 07, 2022. After examining the reply submitted by the *Noticee* vide letter dated October 19, 2022, SEBI alleged violation of the relevant provisions of the Securities Contracts (Regulation) Act, 1956 [hereinafter referred to as "**SCR Act**"], the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 (hereinafter referred to as "**Stock Brokers Regulations**"), circulars framed thereunder and circulars issued by National Stock Exchange India Limited (hereinafter referred to as "**NSE**").

B. Proceedings before Designated Authority (DA)

3. Pursuant to findings/observations made in the course of inspection and after examining the response of the *Noticee* to the same, enquiry proceedings under provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as "**Intermediaries Regulations**") were initiated against the *Noticee* by appointing a Designated Authority (hereinafter referred to as "**DA**") in the matter on September 06, 2023.

4. Based on the findings of facts, DA issued a show cause notice dated November 08, 2023 to the *Noticee* under regulation 25 of the Intermediaries Regulations alleging violation of-

I. Clause 1 of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 for misuse of clients' funds.

II. Clause 5.4 of SEBI Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 read with clause 8.1.1 of Annexure to SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and sub-clause (e) of clause 12 of Annexure-A to SEBI Circular No. MIRSD/SE/Cir-19/2009 dated December 03, 2009 for non-settlement of inactive clients' funds.

III. Clause 4.1.2 and 4.1.5 of SEBI Circular No. SEBI/HO/MIRSD/DOP/ CIR/P/2019/139 dated November 19, 2019 read with Clause 2 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/ 2020/146 dated July 31, 2020 for incorrect reporting of peak margin.

IV. Clause 2.3 of SEBI Circular No. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 read with NSE Circular No. NSE/INSP/38743 dated August 30, 2018 and NSE Circular No. NSE/INSP/39393 dated November 13, 2018 for discrepancy in stock reconciliation.

V. Clause 2.6 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016 read with sub-clause (d) of clause 2 of SEBI circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 for client funding.

VI. Clause 3 of SEBI Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2021 dated December 02, 2021 with respect to disclosure of investor complaints on the *Noticee's* website.

VII. sub-clause (5) of clause A of Schedule II read with sub-regulation (f) of regulation 9 of the Stock Brokers Regulations and Annexure A to NSE Circular No. NSE/COMP/48895 dated July 10, 2021 for discrepancy in net worth data submitted to the Exchange.

VIII. Clause 3.2 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016 read with NSE circular No. NSE/INSP/33276 dated September 27, 2016 and NSE Circular No. NSE/ INSP/31912 dated March 07, 2016 for discrepancy in reporting of enhanced supervision data on weekly basis.

IX. Clause 7 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016 for discrepancy in reporting of enhanced supervision data on monthly basis.

X. Sub-clause (e) of Clause 6.1.1 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with NSE Circular Nos. NSE/ INSP/28925 dated February 20, 2015 and NSE/INSP/ 50229 dated November 08, 2021 for discrepancy in reporting of risk based supervision data.

XI. Clause (f) of sub-rule (3) of rule 8 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "**SCR Rules**") for engaging as Principal in business other than that of securities involving personal financial liability.

XII. Clause 2.4 of SEBI Circular No. MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008 read with NSE Circular No. NSE/INSP/36786 dated January 19, 2018 for mismatch in ledger balance vis-à-vis daily margin statements sent to the clients.

XIII. sub-clause (5) of clause A of Schedule II read with sub-regulation (f) of regulation 9 of the Stock Brokers Regulations read with clause (ii) of regulation 6.1.6.2 of National Stock Exchange of India Limited Regulations (F&O Segment) and sub-clause (ii) of clause (c) of regulation 6.1.5 of Part A of National Stock Exchange (Capital Market) Trading Regulations, 1994 for excess payout made to clients.

XIV. SEBI circular No. SEBI/HO/MIRSD/CIR/P/2018/147 dated December 03, 2018 read with SEBI circular No. CIR/MRD/ DMS/34/2013 dated November 6, 2013 for non-compliance of cyber security and cyber resilience guidelines.

5. Pursuant to the transfer of DA, another DA was appointed on December 07, 2023. In response to the show cause notice issued by the DA, the *Noticee* filed its reply vide letter dated January 04, 2024. Further, a personal hearing was also granted by the DA on January 12, 2024. Pursuant to hearing, the *Noticee* also filed additional submissions on January 18, 2024.

6. The DA after considering the material available on record submitted an Enquiry Report dated February 20, 2024 (hereinafter referred to as "Enquiry Report"/ "DA Report"). DA found that the *Noticee* had violated provisions of the SCR Act, Stock Brokers Regulations, SEBI Circulars and NSE Circulars. Further, the DA taking note of an Adjudication Order No. Order/BM/DS/2023-24/30022 dated February 15, 2024 passed against the *Noticee* in another proceeding with respect to the same alleged violations, imposing a monetary penalty of INR 20 Lakh, recommended that the matter may not be proceeded with.

C. Proceedings before Whole Time Member

7. Based on the Enquiry Report, a post-Enquiry Show Cause Notice dated March 22, 2024 (hereinafter referred to as "**SCN**") was issued to the *Noticee* in terms of sub-regulation

(1) of regulation 27 of the Intermediaries Regulations, calling upon it to show cause as to why action as recommended by the DA or any other action in terms of the Intermediaries Regulations, be not taken against it. The Enquiry Report was also provided along with the SCN. In response to the SCN, the *Noticee* submitted its reply vide letter dated May 03, 2024.

8. After receipt of the reply dated May 03, 2024, a personal hearing in the matter was scheduled for June 10, 2024, which was attended by the *Noticee* through its authorized representative. During hearing submissions were made in line with the reply filed to the show cause notice. During the hearing, it was also requested to make submissions, emphasizing specifically in respect of violations stated at Sr. no. 1 (Misuse of Clients' funds), 2 (Non-settlement of inactive clients' funds), 3 (Incorrect reporting of peak margin) and 5 (Client funding) of the Table No. 1 of the Enquiry Report dated February 20, 2024. Further, on the request of the *Noticee*, time till July 01, 2024 was granted to file post hearing written submissions. The *Noticee*, vide letter dated July 01, 2024, made additional post hearing submissions.

9. The summary of submissions made by the *Noticee* during the hearing and vide its replies dated May 03, 2024 and July 01, 2024 are as under:

   I. The observations as narrated in the Enquiry Report are flawed, erroneous and without any basis.

   II. Adjudication proceedings were initiated against the *Noticee* wherein the present DA acted as Adjudicating Officer and imposed monetary penalty of INR 20 Lakh on the *Noticee* vide order dated February 15, 2024, for the same set of alleged violations.

   III. With respect to the allegation of misuse of funds, there is no misuse. Further, as per Annexure A of Exchange Circular No. NSE/INSP/35412 dated July 20, 2017, specifically point No. 3, the aggregate value of collateral, including

Cash & Cash Equivalents (FD, BG, etc.), deposited with all clearing members must be considered.

IV. The cheques issued to the clearing members were duly recorded in the books of the *Noticee* on the date of issuance itself. However, the clearing member reported its balances as per their book, crediting *Noticee's* accounts when the cheques were cleared.

V. The reported shortage arose due to an interpretational difference in calculating the clearing member balance, non-consideration of Fixed Deposit Receipts (FDRs) and non-consideration of Minimum Liquid Networth). Further, funds were temporarily placed with an NBFC to optimize interest costs on excess cash.

VI. NSE had issued show cause notice dated July 19, 2021 regarding discrepancy between balances reported by clearing member and balance in the *Noticee's* books. Thereafter, the *Noticee* started reporting the clearing members' clear balances from July 30, 2021. Further, NSE imposed monetary penalty of INR 20.26 Lakh and prohibited the *Noticee* from registering new clients for 6 months.

VII. On October 20, 2021, "G" was negative by INR 13,497,793.29 due to non-consideration of FDR of Rs. 2 Crore made out of clients' fund through own account and non-consideration of MLN deposit. On August 23, 2021, "I" and "J" were positive due to non-consideration of FDRs and MLN deposit. Further, the value of *Noticee*'s own securities deposited as collateral with the clearing member was inaccurately calculated in the DA Report by INR 2.43 Crore. Additionally, there was withdrawal of Securities from clearing member after the market hour at 18:48 PM on August 23, 2021 amounting to INR 1.72 Cr.

VIII. The *Noticee* had sufficient funds in the System and that there were no withdrawal of clients' funds or shortage of funds. The reported shortage arose

due to an interpretational difference in calculating the clearing member balance.

IX. The *Noticee* started reporting the clearing members' clear balances from July 30, 2021. Since then, no differences, shortages, or violations of Principle I, II, and III have been identified.

X. During the inspection period, SEBI examined a total of 19 sample dates along with additional 17 sample dates verified by NSE. No violations were found on these dates excluding one day on July 2021. NSE has already imposed penalties for the same period, same violations and observations. Hence, these actions by the Exchange might be taken into consideration.

XI. The observations regarding misutilization of INR 3.57 Crore is not correct as FDRs were created out of clients' funds and an overdraft facility was availed in the client's bank account only.

XII. There is no violation of non-settlement of inactive clients' funds. The *Noticee* was not maintaining the separate bank account to park the funds of inactive clients as the *Noticee* did not had any inactive clients.

XIII. There was no non-compliance found in the quarterly settlement of payment during the inspection period. Further, there is no incorrect reporting of Peak margin amounting to INR 11, 11, 086.71.

XIV. The *Noticee* cannot be held responsible for discrepancy in stock reconciliation as it had stopped reporting the shares which are transferred to the clearing member for the early pay-in of shares, pursuant to NSE penalizing the *Noticee* earlier for reporting excess balances of securities.

XV. The instance of client funding occurred inadvertently, as there was error in the risk management system which allowed the trading software to execute trades for that specific client despite them having the debit balance.

XVI. The *Noticee* is compliant with the requirement regarding publishing of Investor Charter and disclosure of investor complaints on its website. Further, it had shared the required links with SEBI via email. It had also submitted the letter certified by the Company Secretary, certifying that the *Noticee* is compliant with the applicable provisions with regard to disclosure of data of complaints on its website.

XVII. With respect to allegation of misuse of clients' funds, the inspection team did not consider the balance available under the old Trade Guarantee Fund (TGF) and Minimum Liquid Networth (MLN) deposit with the BSE Limited (hereinafter referred to as "BSE"). Inspection team had wrongly computed securities valuation with clearing corporation. The *Noticee* does not agree with the heads namely "E" and "F" mentioned in the inspection report.

XVIII. As regards to difference in the trail balance, the variances noted are a result of entries being inadvertently made on a later date as per the log maintained by back office software.

XIX. There are no discrepancies in reporting of enhanced supervision data on monthly basis.

XX. Further, the observation regarding discrepancies in risk based supervision data reporting was inaccurate as the *Noticee* interpreted that the securities which were re-pledged with the clearing member or clearing corporations cannot be considered as free and unencumbered.

XXI. The *Noticee* has not engaged as Principal in business other than that of securities involving personal financial liability as it borrowed/repaid and advanced the surplus funds to "Vayoo Nandan Finance Company Pvt Ltd" a registered Non-banking Financial Company (NBFC).

XXII. There is no mismatch in ledger balance vis-à-vis Daily Margin Statements sent to the clients and there is no shortage/ excess collection of margins from client.

XXIII. There is no excess payout made to clients. The observations that the *Noticee* made pay out of funds to clients in excess of their balances were made without verifying the facts. All the payments mentioned were based on their early pay-in and the *Noticee* had transferred these shares to clearing member, after receiving the request of the client the payout was done.

XXIV. The *Noticee* had formulated Cyber Security and Cyber resilience policy. Further, the *Noticee* had forwarded the updated policy on cyber security and cyber resilience to SEBI vide its reply to the show cause notice dated November 08, 2023.

XXV. SCN lacks clarity as it fails to specify which allegations are considered grave or otherwise serious under the Enquiry Report.

XXVI. The *Noticee* has filed an appeal before Hon'ble Securities Appellate Tribunal (Hon'ble SAT) against the Adjudication Order dated February 15, 2024 passed against the *Noticee* with respect to identical allegations. The *Noticee* stated that there may be a potential for conflicting outcomes between the SAT's decision in the appeal and that of the Ld. WTM in the present matter and accordingly, the same may be kept in abeyance.

XXVII. Purported violations/non-compliances are the result of the ambiguous circulars/ non-clarity in the circulars and/or due to the interpretational difference. Further, alleged violations are unintentional, and therefore does not warrant any action as contemplated under regulation 27 of the Intermediaries Regulations. Further, SEBI in its adjudication proceedings had already penalized the *Noticee* and any further penalization will put the *Noticee* in double jeopardy and precarious situation.

XXVIII. The *Noticee* prayed for exoneration from the alleged non compliances/ violations as outlined in the Enquiry Report.

10. After noting the submission of the *Noticee*, I now proceed to examine the matter on its merits. However, before proceeding further, it is necessary to mention the relevant provisions of law and the same are reproduced here under for reference:

SEBI Act, 1992

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12.(1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

(2)…….

(3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

Delegation.

19.The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary.

SEBI (Intermediaries) Regulations, 2008

Order

27. (1) On receipt of the report containing the measures recommended by the designated authority, the competent authority shall cause to forward a copy of the report submitted by the designated authority and call upon the Noticee to make its submission, in writing, as to why the measures recommended by the designated authority or any other action as contemplated in these regulations, should not be taken.

(2) The Noticee shall submit, within a period as specified in the notice, but not exceeding twenty-one days from the date of service thereof, a written submission, along with documentary evidence, if any, in support of the written submission:

Provided that upon the request of the Noticee, the competent authority, after recording reasons, in writing may cause to extend the time specified for submitting reply to the notice.

(3) After considering the submission of the Noticee, the competent authority may if deemed fit, for reasons to be recorded by it in writing, remit the matter to the designated authority to enquire afresh or to further enquire and resubmit the report.

(4) The competent authority may grant an opportunity of personal hearing where the designated authority has recommended cancelation of certificate of registration or the competent authority is of the prima facie view that it is a fit case for cancellation of certificate of registration.

Explanation: *It shall not be necessary for the competent authority to give the Noticee any opportunity of personal hearing if neither the designated authority has recommended cancelation of certificate of registration nor the competent authority is of the prima facie view that it is a fit case for cancellation of certificate of registration.*

(5) After considering the facts and circumstances of the case, material on record and the written submission, if any, the competent authority shall endeavor to pass an appropriate order within one hundred and twenty days from the date of receipt of submissions under sub-regulation (2) or the date of personal hearing, whichever is later.

SEBI (Stock Brokers) Regulations, 1992

Conditions of registration.

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

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

SCHEDULE II - CODE OF CONDUCT FOR STOCK BROKERS

A. ***General****.*

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

Securities Contracts (Regulation) Rules, 1957.

Qualifications for membership of a recognised stock exchange.

8. The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:

(1)….

(2)…..

(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if—

……

(f) he engages either as principal or employee in any business other than that of securities [or commodity derivatives] except as a broker or agent not involving any personal financial liability, provided that—

(i) the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,

(ii) in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,

(iii) nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items (a) to (n)15 of the proviso to sub-rule (4).

SEBI Circular Ref.:SMD/SED/CIR/93/23321 dated November 18, 1993

Regulation of transactions between clients and brokers

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

circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.

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

i. Moneys received from or on account of each of his clients and,

ii. the moneys received and the moneys paid on Member's own account.

B] Obligation to pay money into "clients accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit:

Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii).

C] What moneys to be paid into "clients account". No money shall be paid into clients account other than -

i. money held or received on account of clients;

ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;

iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;

iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.

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

i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;

ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;

iii. money which may by mistake or accident have been paid into such account in contravention of para C above.

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

SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008

2. In continuation of earlier circulars and in order to reiterate the need for brokers to maintain proper records of client collateral and to prevent misuse of client collateral, it is advised that:-

2.1……

2.2……

2.3 The records should be periodically reconciled with the actual collateral deposited with the broker.

2.4 Brokers should issue a daily statement of collateral utilization to clients which shall include, inter-alia, details of collateral deposited, collateral utilised and collateral status (available balance / due from client) with break up in terms of cash, Fixed Deposit Receipts (FDRs), Bank Guarantee and securities.

Annexure-A to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

Running Account Authorization

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

a)……...

b)……..

c)……..

d) ……

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

SEBI Circular No. CIR/MRD/ DMS/34/2013 dated November 6, 2013.

Annual System Audit of Stock Brokers/ Trading Members

1. *.....*
2. *The stock exchanges should ensure that system audit of stock brokers/ trading members are conducted in accordance with the prescribed guidelines enclosed in this circular.*

https://www.sebi.gov.in/legal/circulars/nov-2013/system-audit-of-stock-brokers-trading-members_25675.html

Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR /P/2016/95 dated September 26, 2016.

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

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

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

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

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

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

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

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

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

P - Aggregate value of Proprietary Margin Obligation across Stock Exchanges

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

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

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

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

Principle:

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

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

G = (A+B)-C

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

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

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

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

H: - IGI - IDI

3.3.2. Funds of clients used for Margin obligation of proprietary trading:

Stock Exchanges shall thereafter, verify whether the proprietary margin obligations (across Stock Exchanges) is less than the own funds and securities lying with the Stock Exchanges as collateral deposit, as follows:

Principle:

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

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

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

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

I = P - (G+E+F)

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

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

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

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

Principle:

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

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

J = B – (MC+MF)

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

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

J = (C – A) – (MC+MF)

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

3.4 Based on the alerts generated, Stock Exchange shall, inter-alia, seek clarifications, carry out inspections and initiate appropriate actions to protect the clients' funds from being misused. Stock Exchanges shall also maintain records of such clarifications sought and details of such inspections. The aforesaid

calculations are illustrated in tabular format in Table 1, 2 & 3 given at the end of the annexure.

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

3.6. Stock Brokers shall ensure due compliance in submitting the information to the Exchanges within the stipulated time.

6. Standard Operating Procedures for Stock Brokers/Depository Participants - Actions to be contemplated by Stock Exchanges/Depositories for any event based discrepancies

6.1.1. Monitoring criteria for Stock Brokers

e. Failure to submit data for the half yearly Risk Based Supervision within the time specified by Stock Exchange.

7. Uploading clients' fund balance and securities balance by the Stock Brokers on Stock Exchange system

7.1 The Stock Exchanges shall put in place a mechanism and ensure that stock brokers upload the following data on a monthly basis for every client onto each Stock Exchange system where the broker is a member

7.1.1. Exchange-wise end of day fund balance as per the client ledger, consolidated across all segments and also net funds payable or receivable by the broker to/from the client across all Exchanges

7.1.2. End of day securities balances (as on last trading day of the month) consolidated ISIN wise (i.e., total number of ISINs and number of securities across all ISINs)

7.1.3. For every client, number of securities pledged, if any, and the funds raised from the pledging of such securities

7.1.4. The data at Para 7.1.1, 7.1.2 and 7.1.3 pertains to the last trading day of the month. The stock broker shall submit the aforesaid data within seven days of the last trading day of the month.

7.2. Each Stock Exchange shall in turn forward this information to clients via Email and/or SMS on the email IDs and mobile numbers uploaded by the stock broker to the Exchange for their clients.

7.3. The above provisions shall be applicable three months from the date of this circular.

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

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

SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017

1…

2. SEBI has received further representations from the market participants regarding certain provisions of the aforesaid circular. Based on the discussions with different stakeholders, following clarifications are made:

a….

b…

c…

d. Clause 2.6 stands modified as, "Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except, in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time." This clause would be effective from August 1, 2017.

SEBI Circular SEBI/HO/MIRSD/CIR/P/2018/147 dated December 03, 2018

Cyber Security & Cyber Resilience framework for Stock Brokers / Depository Participants

Annexure-1

Data security

29…

30. Stock Brokers / Depository Participants should implement measures to prevent unauthorized access or copying or transmission of data / information held in contractual or fiduciary capacity. It should be ensured that confidentiality of information is not compromised during the process of exchanging and transferring information with external parties. Illustrative measures to ensure security during transportation of data over the internet are given in Annexure B.

Application Security in Customer Facing Application

35. Application security for Customer facing applications offered over the Internet such as IBTs (Internet Based Trading applications), portals containing sensitive or private information and Back office applications (repository of financial and personal information offered by Brokers to Customers) are paramount as they carry significant attack surfaces by virtue of being available publicly over the Internet for mass use. An illustrative list of measures for ensuring security in such applications is provided in Annexure C.

Certification of off-the-shelf products

36. Stock Brokers / Depository Participants should ensure that off the shelf products being used for core business functionality (such as Back office applications) should bear Indian Common criteria certification of Evaluation Assurance Level 4. The Common criteria certification in India is being provided by (STQC) Standardisation Testing and Quality Certification (Ministry of Electronics and Information Technology). Custom developed / in-house software and

components need not obtain the certification, but have to undergo intensive regression testing, configuration testing etc. The scope of tests should include business logic and security controls.

SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated, November 19, 2019

1…

2…

3…

4. In cash segment, the VaR margin is collected by Clearing Corporation (CC)up front from trading member/clearing member by adjusting against the available liquid assets of TM/CM at the time of trade. However, the quantum, form and mode of collection of the margin from the client is left to the discretion of TM/CM. In order to align and streamline the risk management framework of both cash and derivatives segments, with respect to collection of margins from the clients and reporting of short-collection/non-collection of margins, following guidelines are issued:

4.1 Collection of margins from the clients by TM/CM in cash segment:

4.1.1…

4.1.2 Henceforth, like in derivatives segment, the TMs/CMs in cash segment are also required to mandatorily collect upfront VaR margins and ELM from their clients. The TMs/CMs will have time till 'T+2' working days to collect margins (except VaR margins and ELM) from their clients. (The clients must ensure that the VaR margins and ELM are paid in advance of trade and other margins are paid as soon as margin calls are made by the Stock Exchanges/TMs/CMs. The period of T+2 days has been allowed to TMs/CMs to collect margin from clients taking into account the practical difficulties often faced by them only for the purpose of levy of penalty and it should not be construed that clients have been allowed 2 days to pay margin due from them.)

….

4.1.5 As like in derivatives segments, the TMs/CMs shall report to the Stock Exchange onT+5 day the actual short-collection/ non-collection of all margins from clients.

SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/ 2020/146 dated July 31, 2020.

1…

2. In view of the representations received from investors, TMs/ CMs, stock broker associations, in this regard, following has been decided:

2.1. If TM / CM collects minimum 20% upfront margin in lieu of VaR and ELM from the client, then penalty for short-collection / non-collection of margin shall not be applicable. However, it is reiterated that Clearing Corporation shall continue to collect the upfront margin from the TM / CM based on VaR and ELM.

2.2. The penalty provision for short-collection / non-collection of upfront margin in cash segment shall be implemented with effect from September 01, 2020.

SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021

1…

…

5. In partial modification of the aforementioned circulars dated December 03, 2009 and September 26, 2016 on settlement of running account, following has been decided:

…

5.4 For the clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction, the credit balance shall be returned to the client by TM, within next three working days irrespective of the date when the running account was previously settled.

Annexure A to NSE Circular NSE/COMP/48895 dated July 10, 2021

Annexure A

CLARIFICATION ON NETWORTH COMPUTATION

A)…

B) Non-Allowable Assets

S. No.	*Components of Net worth*	*Remarks*
6	*Doubtful Debts and advances*	*This shall include: -* *• Debts or advances overdue for more than three months.* *For instance: Debit Balance in the trading account of client 'A' as on Dec 01, 2020 – Rs. 1000. If the amount is not received till March 31, 2021, then the outstanding amount as on March 31, 2021 is to be reduced from the Networth (since the amount is outstanding for more than three months).* *• Wherever, a provision is created for Doubtful / Bad Debts, net amount i.e. after reducing provision made for Doubtful / Bad Debts shall be considered.* *• Any amount given in the nature of Loans, advances, Inter corporate deposits given to associates including subsidiaries / group companies of the member.* *• Loans given to Directors/Partners or any related party of the Member or its Directors or its partners or to the entities in which such director /partners or their relatives have control, irrespective of time period, shall also be deducted.* *• 'Associate' shall have the meaning as per the SEBI (Intermediaries) Regulations, 2008*

SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/676 dated December 02, 2021

1)…

2)…

3) Additionally, in order to bring about transparency in the Investor Grievance Redressal Mechanism, it has been decided that all the Stock Brokers shall disclose on their respective websites, the data on complaints received against them or against issues

dealt by them and redressal thereof, latest by 7th of succeeding month, as per the format enclosed at Annexure 'B' to this circular.

The web-link is provided as below-

https://investor.sebi.gov.in/pdf/investor-charter/Recognized%20Stock%20Brokers.pdf

National Stock Exchange (Futures & Options) Trading Regulations, 2000

6. RECORDS, ANNUAL ACCOUNTS & AUDIT

…

6.1.6.2. The transfer from constituent's account to Trading Member's account shall be allowed under circumstances enumerated below:

(i) ***Obligation to pay money into "Constituents account":*** *Every Trading Member who holds or receives money on account of a constituent shall forthwith pay such money to current or deposit account at bank to be kept in the name of the Member in the title of which the word "Constituents" shall appear (hereinafter referred to as "Constituents Account"). Trading Member may keep one consolidated constituents account for all the constituents or accounts in the name of each constituent, as he thinks fit; provided that when a Trading Member receives a cheque or draft representing in part money belonging to the constituent and in part money due to the Trading Member, he shall pay the whole of such cheque or draft into the constituents account and effect subsequent transfer as laid down below in para (iii.b).*

(ii) ***Money to be paid into "constituents account"****: No money shall be paid into constituents account other than –*

a. money held or received on account of constituents;

b. such moneys belonging to the Trading Member as may be necessary for the purpose of opening or maintaining the account;

c. money for replacement of any sum which may by mistake or accident have been drawn from the account;

d. a cheque or draft received by the Trading Member representing in part money belonging to the constituent and in part money due to the Trading Member.

(iii) ***Money to be withdrawn from "constituents account":*** *No money shall be drawn from constituents account other than –*

a. money properly required for payment to or on behalf of constituents for or towards payment of a debt due to the Member from constituents or money drawn on constituent's authority, or money in respect of which there is a liability of constituents to the Trading Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each constituent;

b. such money belonging to the Trading Member as may have been paid into the constituent account under para (ii.b) and (ii.d) above;

c. money which may by mistake or accident have been paid into such account.

(iv) ***Right to lien, set-off etc., not affected****: Nothing in this para 1 shall deprive a Trading Member of any recourse or right, whether by way of lien, set- off, counter-claim charge(s) or otherwise against moneys standing to the credit of constituents account.*

(v) (a) The Trading Members shall keep the dematerialised securities of Constituents in a separate beneficiary account distinct from the beneficiary account maintained for holding their own dematerialised securities. No delivery towards the own transactions of the Trading Members shall be allowed to be made from the account meant for Constituents. For this purpose, every Trading Member is required to open a beneficiary account in the name of the Trading Member exclusively for the securities of the Constituents (hereinafter, to be referred to as "Constituents beneficiary account"). A Trading Member may keep one consolidated Constituents' beneficiary account for all its Constituents or different accounts for each of its Constituents as it may deem fit.

(b) Securities to be delivered into Constituents beneficiary account: No security shall be delivered into Constituents beneficiary account, other than

A. securities held or received on account of Constituents towards margin or as security deposit;

B. securities for replacement of those which may by mistake or accident have been drawn from the account.

(c) 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 or 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; Provided further that the securities so drawn shall not in any case exceed the securities so held for the time being for the respective Constituent.

Part A of National Stock Exchange (Capital Market) Trading Regulations, 1994

….

6.1.5 (a)

….

(c) The transfer from client's account to Trading Member's account shall be allowed under circumstances enumerated below:

(i) Obligation to pay money into "Clients account": Every Trading Member who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the Member in the title of which the word "Clients" shall appear (hereinafter referred to as "Clients Account"). Trading Member may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit; provided that when a Trading Member receives a cheque or draft representing in part money belonging to the client and in part money due to the Trading Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para (iii.B).

(ii) Moneys to be paid into "clients account": No money shall be paid into clients account other than

A. money held or received on account of clients;

B. such moneys belonging to the Trading Member as may be necessary for the purpose of opening or maintaining the account;

C. money for replacement of any sum which may by mistake or accident have been drawn from the account;

D. a cheque or draft received by the Trading Member representing in part money belonging to the client and in part money due to the Trading Member.

(iii) Moneys to be withdrawn from "clients account": No money shall be drawn from clients account other than –

A. money properly required for payment to or on behalf of clients for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Trading Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;

B. such money belonging to the Trading Member as may have been paid into the client account under para (ii.B) and (ii.D) above. money which may by mistake or accident have been paid into such account. National Stock Exchange of India Limited Regulations – Part A (Capital Market Segment)

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

NSE Circular No. NSE/INSP/28925 dated February 20, 2015

Risk Based Supervision-Submission of information for Half year ended September 30, 2014

This has reference to the Risk Based Supervision framework adopted by SEBI and our earlier circular dated NSE/INSP/28288 dated December 08, 2014 wherein Members were asked to submit the details for the financial year 2013-14.

In continuation to the same, Members are now required to collate and submit the information/data for the half year ended September 30, 2014 to the Exchange. The

particulars of such information/data sought is enclosed as Annexure-A. It may be noted that the last date of submission of the information/data is March 16, 2015.

The web-link is provided as below-
https://www.nseindia.com/resources/exchange-communication-circulars

NSE Circular No. NSE/ INSP/31912 dated March 07, 2016

Tagging/Flagging of Demat /Bank accounts of trading / clearing members

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In order to ensure proper segregation of client securities and clear demarcation of demat accounts used for client purposes, Members are hereby directed to ensure that all their demat accounts used for holding clients securities are compulsorily flagged as "client margin account' or 'client beneficiary account' in the respective depositories by April 30, 2016.

NSE Circular No. NSE/INSP/33276 dated September 27, 2016

Enhanced Supervision of Stock Brokers

SEBI has issued circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, on the subject "Enhanced Supervision of Stock Brokers/Depository Participants". The copy of the said SEBI circular is enclosed for your reference.

Members are requested to take note of the contents of the circular and comply.

The web-link is provided as below-
https://www.nseindia.com/resources/exchange-communication-circulars

Circular No. NSE/INSP/35412 dated July 20, 2017

Sub: Enhanced supervision- Monitoring of Clients' Funds lying with the Stock Broker

…..

In view of the clarification given by SEBI on June 22, 2017 vide their circular CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/64, all Trading Members are required to submit the data towards monitoring of clients funds as on last trading day of every month on or before the next trading day till March 2018. Thereafter, the uploading of that data by the stock broker to the Stock Exchanges shall be on weekly basis. Accordingly, the first submission shall be made for the data as on the last trading day of July 2017 by August 01, 2017 and thereafter on a monthly basis (i.e. data as on last trading day of every month on or before the next trading day) till March 2018. The data to be submitted for this purpose, along with necessary clarifications, is enclosed as Annexure-A.

Annexure A

S. No.	*Particulars*	*Remarks*
3	*Collateral deposited with clearing member in form of Cash and Cash Equivalents (In Rs.)*	*Aggregate value of collateral deposited with your clearing member in form of Cash & Cash Equivalents (FD, BG, etc.) In case of BG, only funded portion of the BG shall be considered.*

NSE Circular No. NSE/INSP/36786 dated January 19, 2018

Issuance of Daily Margin Statement

This has reference to SEBI circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 & Exchange circulars NSE/INSP/10239 dated February 11, 2008, NSE/INSP/10605 dated April 21, 2008 and NSE/INSP/19583 dated December 14, 2011 regarding issue of daily margin statement to clients.

SEBI vide its letter dated January 18, 2018 has clarified that the said daily margin statement is required to be issued by Members to clients on a daily basis at the end of the trade day (T-Day) itself. The indicative format of the daily margin statement is enclosed as Annexure-A.

The web-link is provided as below-

https://www.nseindia.com/resources/exchange-communication-circulars

NSE Circular No. NSE/INSP/38743 dated August 30, 2018

Standardisation of Register of Securities, Holding Statement, Bank Book and Client Ledger

…

In order to standardize the maintenance of books of accounts / records and to ensure uniformity across all Members, a standard format for register of securities, holding statement, bank book and client ledger is prescribed herewith.

The web-link is provided as below-
https://www.nseindia.com/resources/exchange-communication-circulars

NSE Circular No. NSE/INSP/39393 dated November 13, 2018

Clarifications on Standardisation of Register of Securities, Holding Statement, Bank Book and Client Ledger

This has reference to NSE circular no. NSE/INSP/38743 dated August 30, 2018 regarding maintenance of Register of Securities (ROS), Holding Statement, Bank book and Client Ledger.

Exchange shall seek periodic upload of day-wise Holding Statement in the specified standard format. The periodicity of reporting shall be weekly. Members have to submit the above mentioned data for all calendar days of that week on or before the next four trading days of subsequent week. This circular shall be applicable with effect from January 01, 2019. The first submission shall have to be made for the week ending on January 06, 2019.

NSE Circular No. NSE/INSP/50229 dated November 08, 2021

Risk Based Supervision (RBS)-submission of information for the period April 01, 2021-September 30, 2021

Members are requested to submit the Information / data towards the Risk Based Assessment for the period April 01, 2021–September 30, 2021 to the Exchange. The particulars of such information / data sought in this regard is enclosed as Annexure-

A and the same has to be submitted to the Exchange electronically through the Inspection module in the Member portal latest by November 30, 2021.

The web-link is provided as below-

https://www.nseindia.com/resources/exchange-communication-circulars

BSE Notice No. 20220624-45 dated June 24, 2022

Submission of data towards monitoring of client funds under Enhanced Supervision and Client Level Cash &Cash Equivalent Balances

Members' attention is drawn to Exchange notice no. 20211019-40 dated October 19, 2021 on submission of data towards monitoring of client funds under Enhanced Supervision guidelines wherein it has been clarified that in case of Bank Guarantee (BG), only funded portion of the BG shall be considered while computing Collateral deposited with clearing corporations/clearing members in form of Cash and Cash Equivalents. However, Exchange has observed that certain members are including value of underlying non-cash collateral such as shares or immovable property etc. given for BG in the funded portion of BG.

In view of the same, members are advised to ensure that underlying collateral of BG given in form of Cash or FDR only is considered in the funded portion of BG for the purpose of aforesaid notice and underlying collateral of BG given in form other than Cash/FDR such as shares/immovable property etc. is considered in the non- funded portion of BG.

BSE Notice No. 20231107-1 dated November 07, 2023

Bank Guarantees (BGs) created out of clients' funds

This has reference to SEBI vide circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/061 dated April 25, 2023 and Exchange Notice 20230425-35 dated April 25,2023 wherein creation of BG out of clients' funds has been prohibited as under:

a) Beginning May 01, 2023, no new BGs to be created out of clients' funds by SBs/CMs.

b) Existing BGs created out of clients' funds to be wound down by September 30, 2023.

.....

However it has been observed by the Exchange that certain members are still considering the funded value of BG while reporting data towards the weekly monitoring of client funds (Enhanced Supervision of Stock Brokers) under data point numbered as 2 "Collateral deposited with clearing corporations in form of Cash and Cash Equivalents (In Rs.) and data point numbered as 3 "Collateral deposited with clearing member in form of Cash and Cash Equivalents (In Rs.)" of Annexure A of BSE Notice 20220624-45 dated June 24, 2022.

In view of the same, members are advised not to consider BG for the computation of availability of client payables and accordingly, member should not include the value of BG while reporting data towards the weekly monitoring of client funds (Enhanced Supervision of Stock Brokers) under aforesaid data points of Annexure A of BSE Notice 20220624-45 dated June 24, 2022.

NSE Circular No. NSE/INSP/61572 dated April 12, 2024

Risk Based Supervision (RBS) - Submission of information for the period April 01, 2023 – March 31, 2024 (Financial Year ended March - 2024)

Members are requested to submit the information / data towards the Risk Based Assessment for the period April 01, 2023 – March 31, 2024 to the Exchange. The particulars of such information / data sought in this regard are enclosed as Annexure-A. The same has to be submitted to the Exchange electronically through the Inspection module in the Member portal latest by May 31, 2024.

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Annexure A

SR. No.	*Particulars*	*Details*	*Description*

23	*Total available collaterals from all debit balance clients as on last day of the Assessment period*		*Total available collateral from debit balance clients ….. as on last day of the assessment period: ..... Total value of collateral to be considered should be, collateral available in the demat account of the Trading Member which is Pool Account and Pledged to the Trading Member i.e., Client Securities Margin Pledge Account, Client Securities Under Margin Funding Account, Client Unpaid Securities Pledgee Account.*

D. Examination of Evidence

11. I have carefully perused the material available on record including the Enquiry Report submitted by the DA, responses of the *Noticee* and applicable provisions of law. I shall now proceed to deal with the violations alleged in the SCN *in seriatim*.

I. Misuse of clients' funds

12. In the course of inspection, it has been observed that value of "G" was negative for 10 days (all trading days from July 05, 2021 to July 16, 2021), in the range of INR 2.03 Crore to INR 11.34 Crore. Additionally, it has been observed that the value of G was also negative on October 20, 2021 by INR1,34,97,793.29. Further, the value of "I" and "J" was positive on August 23, 2021 to the extent of INR 5,99,57,200.46 and INR 70,91,967.80. The details of "G" negative on 10 days (all trading days from July 05, 2021 to July 16, 2021) are provided in the table below-

Table No. 1

Sr. No.	*Date*	**Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges**	**Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all Stock Exchanges. Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered**	**Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)**	**Total debit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)**	**The value of G may indicate utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges.**
		A **(INR)**	***B*** **(INR)**	***C*** **(INR)**	***D*** **(INR)**	***G*** **(INR)**
1	05-Jul-21	6,89,767.86	21,05,02,783.25	23,15,68,000.51	81,21,019.04	-2,03,75,449.40
2	06-Jul-21	2,21,295.76	12,89,70,602.37	21,12,95,789.58	6,56,56,628.16	-8,21,03,891.45
3	07-Jul-21	16,86,401.41	12,34,87,223.41	21,91,77,575.34	3,51,33,699.20	-9,40,03,950.52
4	08-Jul-21	2,85,868.64	17,76,07,938.91	23,09,79,552.60	32,53,334.01	-5,30,85,745.05
5	09-Jul-21	9,38,394.67	12,59,69,934.91	21,55,27,394.98	6,62,01,297.89	-8,86,19,065.40
6	12-Jul-21	4,31,778.26	11,53,76,667.82	22,29,11,823.10	6,93,78,098.87	-10,71,03,377.02
7	13-Jul-21	17,79,005.04	15,04,29,258.82	25,08,91,513.62	1,94,35,813.58	-9,86,83,249.76
8	14-Jul-21	4,08,59,345.15	11,04,44,449.82	25,77,07,757.46	1,98,30,127.56	-10,64,03,962.49
9	15-Jul-21	8,79,271.31	11,05,86,966.32	22,30,18,782.28	3,48,05,982.82	-11,15,52,544.65
10	16-Jul-21	22,06,425.02	10,72,14,942.53	22,28,86,474.54	4,44,99,296.73	-11,34,65,106.99

13. It has been alleged that on October 20, 2021, G was negative by INR1,34,97,793.29 and amount of funds of one client was used for another client to the extent of

INR71,45,326.95 and fund was used for own purpose to the extent of INR 63,52,466.34. The details are provided in the table below:

Table No. 2

Sr.No	Particulars	Amt (In INR)
1	Total of day end balance in all Client Bank Accounts	6,24,507.45
2	Collateral deposited with exchanges in form of Cash and Cash Equivalents	3,66,00,000.00
3	Collateral deposited with clearing member in form of Cash and Cash Equivalents	22,08,75,489.05
4	Total Credit Balance of all clients	27,15,97,789.79
5	Total debit balance of all clients	71,45,326.95
	DIFFERENCE (G)	**-1,34,97,793.29**

14. It has also been alleged that on August 23, 2021, value of I (i.e. Funds of clients used for Margin obligation of proprietary trading) was positive to the extent of INR 5,99,57,200.46 and value of J (i.e. Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading) was positive to the extent of INR 70,91,967.80. The details are provided in the table below.

Table No. 3

Sr.No	Particulars	Amt (In INR)
1	Total of day end balance in all Client Bank Accounts	96,65,767.31
2	Collateral deposited with exchanges in form of Cash and Cash Equivalents	3,70,99,547.00
3	Collateral deposited with clearing member in form of Cash and Cash Equivalents	20,66,45,067.85
4	Total Credit Balance of all clients	24,24,57,649.38
5	Total debit balance of all clients	78,37,540.08
	DIFFERENCE (G)	**1,09,52,732.78**

Sr.No	Particulars	Amt (In INR)
	Amount of funds of one client used for another client	**N.A**
	Amount fund used for own purpose	**N.A**
6	Value of Own Securities Deposited as Collateral with Clearing corporation	-
7	Value of Own Securities Deposited as Collateral with Clearing Member	5,34,18,830.96
8	Value of Non funded portion of the Bank Guarantee	8,18,49,547.00
9	Proprietary margin Obligation	20,61,78,311.20
	Funds of clients used for Margin obligation of proprietary trading (I)	**5,99,57,200.46**
10	Margin utilized for positions of Credit Balance Clients	7,57,90,089.14
11	Free/unblocked Collateral deposited with Clearing corporation	1,59,79,886.00
12	Free/unblocked Collateral deposited with Clearing Member	13,39,29,939.13
	Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading (J)	**70,91,967.80**

15. I note that as per SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (refer page 17-23 of the order) , the total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/ clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance "C". Further, Exchanges shall calculate the difference i.e. "G" as follows:

    G = (A+B)-C

16. For better understanding, following may be referred to-

    "A" - Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges
    "B" - Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member)

in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG ,shall be considered as part of B.

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

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

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

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

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

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

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

17. I note that if "G" is negative, then the total available fund is less than the ledger credit balance of clients. The negative value of "G" may indicate utilisation of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes.

18. **With respect to the allegation of "G" negative for 10 days** i.e. all trading days from July 05, 2021 to July 16, 2021, I note that the *Noticee*, in the written submissions, has stated that as per its understanding, uncleared cheques issued to the clearing members were duly recorded in the books of the *Noticee* on the date of issuance itself.

Accordingly, the uncleared cheques were shown to be collateral deposited with the Clearing member. The *Noticee* also stated that it is a question of interpretation that the collateral deposited with clearing member in the form of cash includes the yet to be cleared cheques. The *Noticee* has also stated that in the absence of express provision of prohibition, it was right in considering the uncleared cheques as collateral deposited with the clearing member. It was also pointed out by the *Noticee* that there was no allegation with respect to the cheques being late bounced or amounts were credited back in the Member's accounts.

19. On perusal of the Annexure A of NSE Circular No. NSE/INSP/35412 dated July 20, 2017 (refer page 32-33 of the order), I am of the view that the *Noticee* has misinterpreted Point No. 3 of the said Annexure, which clearly specifies that for calculating 'Collateral deposited with clearing member in form of Cash and Cash Equivalents', aggregate value of collateral deposited with clearing member in form of cash and cash equivalents (FD, BG, etc.) and in case of BG, only funded portion of the BG shall be considered. The intent of the above circular is to ensure that cash and cash equivalents are available with Clearing member. The issuance of cheque cannot be considered as cash equivalents available with clearing member as the same is yet to be cleared and unless it is cleared, uncertainty with regard to realisation of amount remains. Therefore, uncleared cheques cannot be treated equivalent to cash. Therefore, I find that the submission of the *Noticee* with respect to "uncleared cheques" is unacceptable. Further, the submission of the *Noticee* with respect to absence of express provision of prohibition for recording uncleared cheques issued to the clearing members in the books of the *Noticee*, on the date of issuance itself, does not have merit, as the said circular does not provide for it.

20. Further, I note that the *Noticee*, has made the following submission-

"Based on the calculations, supported with available documentation, and considering the clearing member balance as reported by Noticee, the variable "G" was positive for 1 day and negative for 9 days during all trading days from July 05, 2021 to July 16,

2021, ranging from Rs.3.28 Crore to Rs.11.13 Crore. Similarly, "H" was positive for 1 day and negative for 9 days, corresponding to the negative trend of '"G."

21. Without prejudice to the earlier finding on this issue, even by the own admission of the Noticee, the variable "G" is still negative for 9 days instead of 10 days. Accordingly, even if I were to accept the submission of the *Noticee* regarding uncleared cheques, the "G" would be still negative, which indicates mis-utilisation of clients' funds for other purposes. I find that this submission does not further the case of the *Noticee*.

22. Further, the *Noticee* has also submitted that NSE had issued show cause notice dated July 19, 2021 regarding discrepancy between balances reported by clearing member and balance in *Noticee*'s books. Further, NSE imposed monetary penalty of INR 20.26 Lakh and prohibited *Noticee* from registering new clients for 6 months. *Noticee* submitted that during the inspection period, SEBI examined a total of 19 sample dates along with additional 17 sample dates verified by NSE. No violations were found on these dates excluding one day on July 2021. It is submitted by *Noticee* that NSE has already imposed penalties for the same period and same violations and observations, and the *Noticee* requested that these actions by the Exchange might be taken into consideration. In this regard, I note that the show cause notice dated July 19, 2021 was issued by NSE, *inter alia,* with respect to Misuse of clients' funds, i.e., shortfall of clients' funds to the extent of INR 2 crores, INR 5.20 crores and INR 3.90 crores as of April 9, 2021, April 16, 2021, and April 30, 2021, respectively. I note that the dates for which NSE has alleged violation for misuse of clients' funds (i.e. April 9, 2021, April 16, 2021, and April 30, 2021) are different from the dates for which violations has been alleged in the extant case by SEBI (i.e. July 05 to July 16, 2021). In view of the same, I do not find any merit in the submission of the *Noticee.*

23. On examination of the available records and the above observations, I find that the variable "G" was negative on 10 days i.e. all trading days from July 05, 2021 to July 16, 2021, which indicate utilisation of clients' funds for other purposes.

24. **With respect to the allegation of "G" negative on October 20, 2021 by INR 1,34,97,793.29**, the *Noticee* submitted that the same was due to the following:

(a) Non-consideration of 2 FDRs of INR 1 Crore each made out of client's fund through *Noticee*'s own account.

(b) Non-consideration of Minimum Liquid Networth (MLN) deposit

25. With respect to point (a) in paragraph 24 above, the *Noticee* has submitted that two FDRs were created out of client funds through own account and an overdraft facility was availed in the client's bank account. Consequently, the balance of FDRs, as they pertain to client funds, should be accounted for in the cumulative funds available in all Client Bank Accounts and value of FDRs, including the settlement account, maintained by the stock broker across stock exchanges.

26. I note that the DA accepted the submission of the *Noticee* that the funds which were used to create the two FDRs of 1 Crore each on June 26, 2020 and August 04, 2020, pertained to clients. Taking into account the same, the DA observed that SEBI Circular dated September 26, 2016 on enhanced supervision has clearly specified the calculation of value of G and therefore, even though the source of the FDRs is clients' funds, the same cannot be considered for the calculation of the values of G, I and J, as it will lead to non-adherence to the provisions of SEBI Circular dated September 26, 2016. Further, the DA observed that no explanation is given by the *Noticee* for transferring of clients' funds to own account.

27. I have perused the documents submitted by the *Noticee* including the bank account statements, fund trail details and email confirmation for FDRs by bank and note that the FDRs have been created out of the own bank account, which is named as 'Evermore Stock Brokers Private Limited – Own Account'. The *Noticee* has also shown funds being transferred from Clients' accounts to *Noticee's* various accounts including own account of the *Noticee* from which two FDRs of INR 1 Crore each were made. I note that both the FDRs have neither been created out of clients' accounts nor settlement account.

28. I also note that the *Noticee* has accepted that FDRs were created out of the *Noticee*'s own account even though the funds pertained to the Clients. However, there is no justification for such transfer of funds to own account of the *Noticee* for the purpose of creation of FDRs. As per the regulatory requirements, Stock broker is required to maintain a separate bank account for holding clients' funds and its own funds i.e. "Name of Stock Broker- Client Account" for maintaining clients funds and "Name of Stock Broker- Proprietary Account" for own funds respectively. I note that SEBI Circular dated September 26, 2016, was issued, *inter alia*, to cover the broad area pertaining to monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges, through a sophisticated alerting and reconciliation mechanism, to detect any mis-utilisation of clients funds. It also aims to impose uniform penal action on Stock Brokers/ depository participants by the Stock Exchanges/ Depositories in the event of non-compliance with specified requirements. The said Circular permits the transfer of funds for legitimate purposes such as recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker etc. I am of the view that the *Noticee,* by transferring the funds from the client's account to its own account, has not adhered to the provisions of the Circular and has adopted a practice which is not in accordance with the regulatory framework. Therefore, the submission of the Noticee that FDRs of INR 2 Crore was made out of client's funds cannot be accepted due to the following reasons:

a) FDRs are in the name of the trading member but have been created out of funds transferred from the client's account to the *Noticee's* account.
b) There is no justification for transfer of funds to the account of the *Noticee*.
c) The money taken out of the client's account could be for any other reason other than for using as collateral.

Therefore, G has been correctly calculated as negative.

29. With respect to point (b) in paragraph 24, the *Noticee* submitted that MLN has not been considered by the Inspection Team while calculating the deposit with the clearing

corporation in the form of cash and cash equivalents. I note that the *Noticee* has not mentioned the specific amount of MLN deposit that has been considered. However, I note that the *Noticee* has submitted Collateral details as on October 20, 2021 with Indian Clearing Corporation Ltd. (ICCL), wherein "Amount adjusted towards MLN/Additional Margin" of INR 50,00,000 is shown under the head "Cash / Cash Equivalent".

30. The DA has observed that as per BSE, MLN deposit is not to be considered as collateral deposited with the exchanges. The *Noticee*, in its submission, stated that prior to issuance of BSE Circular No. 20220624-45 dated June 24, 2022 and 20231107-1 dated November 07, 2023, there was no clarification or FAQ regarding MLN consideration. In this regard, I note that both the Notice Nos. 20220624-45 dated June 24, 2022 and 20231107-1 dated November 07, 2023 issued by BSE specifically pertain to creation of bank Guarantees out of clients' funds and not with respect to TGF /MLN. Accordingly, the said BSE Notices are not relevant to the extant matter. I also note that the practice of not considering MLN as a collateral was prevalent in stock exchanges/ clearing corporations. Further, I note that this has also been confirmed by ICCL vide emails dated July 05, 2022 and July 06, 2022 addressed to the *Noticee* that MLN should not be considered while reporting "collateral deposit with CC" and that there is no trading exposure provided on MLN Deposits placed with ICCL, hence the same is reflected under blocked margins. Further, I note that the DA, in the Enquiry Report, *inter alia*, has observed that TGF of INR 10 Lakh can be considered as collateral deposited with exchanges.

31. Considering the above, I agree with the observation of the DA regarding non-consideration of MLN for calculating collateral deposited with the exchanges. Accordingly, I do not find any merit in the submission of the *Noticee* that "G" was negative on October 20, 2021 due to non-consideration of MLN deposit. I find that "G" was negative on October 20, 2021 to the extent of INR 1,24,97,793.29.

32. **Further, with respect to the allegation of "I" being positive by INR 5,99,57,200.46 and "J" being positive by INR 70,91,967.80 on August 23, 2021**, the *Noticee* submitted that the same was due to the following:

(a) non-consideration of FDRs of INR 2 Crore made out of clients' fund through own account;

(b) non-consideration of MLN deposit;

(c) the value of *Noticee*'s own securities deposited as collateral with the clearing member was inaccurately calculated in the DA Report by INR 2.43 Crore; and

(d) Withdrawal of Securities from clearing member after the market hour at 18:48 PM amounting to INR 1.72 Crore.

33. I note that the positive value of "I" [calculated as I = P - (G+E+F)] indicates the extent of funds and securities of clients utilized towards proprietary margin obligations. For ease of reference, (P) is Aggregate value of Proprietary Margin Obligation across Stock Exchanges; (E) is Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges); (F) is Aggregate value of Non-funded part of the BG across Stock Exchanges; (G) has already been explained in the preceding paragraphs. The amount of "I" is positive by INR 5,99,57,200.46 on August 23, 2021. The positive value of "J" [calculated as J = (C – A) – (MC+MF)] indicates the extent of clients' funds utilized towards margin obligations of debit balance clients. On the same day i.e. August 23, 2021, the amount of "J" is positive by INR 70,91,967.80.

34. With respect to Point nos. (a) and (b) of paragraph 32 above, I note that the issue of FDRs and MLN has already been considered and the said submissions of the *Noticee* do not have any merit.

35. With respect to point no. (c) of paragraph 32 above, I note that the *Noticee* has also submitted that the value of the *Noticee*'s own securities deposited as collateral with the

clearing member was inaccurately calculated in the DA Report by INR 2.43 Crore. The *Noticee* also submitted that on August 23, 2021, while calculating "I", the value of its own securities deposited as collateral with the clearing member was inaccurately calculated in the DA Report. Further, the *Noticee* stated that the correct value of own securities deposited as collateral with the clearing member is INR 7,76,71,075.45, and not INR 5,34,18,830.96, which was noted in the post- inspection analysis report of SEBI, but has not been addressed in the Enquiry Report. Due to this error, "I" positive increased by INR 2,42,52,244.49 and "J" also was positive by INR 70,91,967.80.

36. I have perused the post-inspection analysis report of SEBI and I note that the following observation has been made by SEBI in the said report-

"iv. Value of Own Securities Deposited as Collateral with Clearing Member

Member has submitted that variance is on account of not considering securities deposited as collateral with Clearing Member in cash segment. Member has submitted the report in this regard. Hence, member's contention in this regard is acceptable."

37. In view of the above observation, I note that the submission of the *Noticee* is acceptable and that the correct value of own securities deposited as collateral with the clearing member is INR 7,76,71,075.45, and not INR 5,34,18,830.96. Accordingly, the value of "I" will change on August 23, 2021.

38. Further, I note that during inspection, the value of "J" was positive by INR 70,91,967.80 on August 23, 2021. I note that the value of "Free/unblocked Collateral deposited with Clearing corporation" was considered to be INR 1,59,79,886.00. However, in the post-inspection analysis report, it was, *inter alia*, observed that the value of collateral as on March 17, 2022 was erroneously considered instead of the value of collateral as on August 23, 2021. Accordingly, in the said report, the contention of the *Noticee* was accepted and the correct value of "Free/unblocked Collateral deposited with Clearing corporation" i.e. INR 2,20,79,698.00 was finally considered. In view of the same, I note that if correct value of "Free/unblocked Collateral deposited with Clearing corporation"

i.e. INR 2,20,79,698.00 is considered, then the value of "J" will also change on August 23, 2021.

39. With respect to the point no. (d) at of paragraph 32 above, I note that the *Noticee* has submitted as under-

> *"…..the violation of Principle II will reduce to Rs.0.97 Crore, after considering the FDR balances of Rs.2.00 Crore which was made from the client's funds and balances of Trade Guarantee Funds (TGF) and Minimum Liquid Net-worth (MLN). It is further submitted that the violation of Principle II of Rs. 0.97 Crore was unintentional and this was due to the securities being withdrawn from the clearing member on 23.08.2021 after the market hour i.e. at 18:78 hrs amounting to Rs. 1.72 Crore. In this regard, the Noticee also forwarded the email with the copy of holding statement for borrowing from Aditya Birla Finance Limited. Unfortunately, the funds were received on the next day i.e. on 24.08.2021. The shortage was recovered on the very next day 24.08.2021, by transferring the amount of Rs. 1.75 Crore. In this regard the Noticee also forwarded its bank statement & confirmation email received from bank to the SEBI."*

40. The *Noticee* has contended that the amount of INR 1.72 Crore securities being withdrawn from the clearing member on August 23, 2021 after the market hour, should have been considered before coming to the conclusion of "I" and "J" positive. The *Noticee* has also stated that the violation of principle II (which pertains to calculation of "I") will reduce to INR 0.97 Crore, after considering the FDR balances of Rs.2.00 Crore which was made from the client's funds and balances of Trade Guarantee Funds (TGF) and Minimum Liquid Net-worth (MLN). With respect to the submission regarding consideration of the amount of INR 1.72 Crore above, I note that the DA has not accepted the submissions of the *Noticee* for the differential INR 0.97 Crore as it was *Noticee*'s responsibility to ensure that adequate funds were available in the system. From the available documents, I note that the securities were withdrawn from clearing member after the market hour on August 23, 2021 and the same were received on

August 24, 2021 i.e. the next day. As per the requirements, the *Noticee* was obligated to ensure adequate funds were available in the system on August 23, 2021. Accordingly, I do not find any merit in the submission of the *Noticee*.

41. I also note that the *Noticee* has made submissions regarding non-consideration of Trade Guarantee Fund (**TGF**) by the inspection team as collateral available with exchanges. In this regard, it is observed that the DA found the *Noticee*'s submissions regarding consideration of old TGF balances of INR 10 Lakh acceptable.

42. After careful consideration, I find that the modified values of "I" and "J" as submitted by the *Noticee* cannot be accepted for reasons mentioned above (except for the submission regarding TGF deposit of INR 10 Lakh and the incorrect calculation of the Noticee's own securities deposited as collateral with the clearing member which is INR 7,76,71,075.45, and not INR 5,34,18,830.96, which have been accepted).

43. After taking into consideration the difference of INR 2.43 Crore (incorrect calculation of "value of own securities deposited as collateral with the clearing member") and INR 10 Lakh (TGF), I find that the value of "I" will be positive by INR 3,47,04,956.42 on August 23, 2021. Further, with respect to the calculation of "J", I note that amount of "J" will also be positive by INR 9,92,155.80. The revised calculation of "I" and "J" is provided in the table below-

Table No. 4

Sr.No	Particulars	Amt (In INR)
1	Total of day end balance in all Client Bank Accounts	96,65,767.31
2	Collateral deposited with exchanges in form of Cash and Cash Equivalents	38,09,95,47.00
3	Collateral deposited with clearing member in form of Cash and Cash Equivalents	20,66,45,067.85
4	Total Credit Balance of all clients	24,24,57,649.38
5	Total debit balance of all clients	78,37,540.08

Sr.No	Particulars	Amt (In INR)
	DIFFERENCE (G)	**1,19,52,732.78**
	Amount of funds of one client used for another client	**N.A**
	Amount fund used for own purpose	**N.A**
6	Value of Own Securities Deposited as Collateral with Clearing corporation	-
7	Value of Own Securities Deposited as Collateral with Clearing Member	7,76,71075.00
8	Value of Non funded portion of the Bank Guarantee	8,18,49,547.00
9	Proprietary margin Obligation	20,61,78,311.20
	Funds of clients used for Margin obligation of proprietary trading (I)	**3,47,04,956.42**
10	Margin utilized for positions of Credit Balance Clients	7,57,90,089.14
11	Free/unblocked Collateral deposited with Clearing corporation	2,20,79,698.00
12	Free/unblocked Collateral deposited with Clearing Member	13,39,29,939.13
	Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading (J)	**9,92,155.80**

44. In this regard, I note that Hon'ble SAT, in the matter of *Samco Securities Ltd. vs. SEBI* (Appeal No. 493 of 2021decided on March 30, 2022), as regards the seriousness of mis-utilizaiton of client's fund has held as under:

"We find that mis-utilization of the clients' credit funds is a grave issue and not in the interest of the securities market. A stockbroker has to treat each of its client as separate and independent entity and ensure that each clients' accounts are settled separately and individually. In this regard, the appellant was statutorily obliged to abide by the directions issued under the SEBI circulars dated November 18, 1993 and September 26, 2016."

45. In view of the aforesaid observations and in context of the facts alleged in the Enquiry Report, I find that value of G was negative on 11 trading days and the values of "I" and "J" were positive on one day. Therefore, I find that the *Noticee* has violated the provisions of clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/ 2016/95 dated September 26, 2016.

II. Non-settlement of inactive clients' funds

46. During inspection, it was observed that the *Noticee* had not maintained separate bank account to park the funds of inactive clients. It was also observed that the *Noticee* had not settled the funds of inactive clients in 87 instances spanning over 8 months (value INR 49.49 Lakh, inadvertently mentioned as INR 29.29 in the Enquiry Report). It has been observed by the DA that the *Noticee* had not settled the funds of inactive clients in 56 instances (he accepted explanation in other 31 instances).

47. In view of the above, it is alleged that the *Noticee* has violated clause 5.4 of SEBI circular No. SEBI/HO/MIRSD/DOP/P/ CIR/2021/577 dated June 16, 2021 (refer page 26 of the order) read with clause 8.1.1 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and sub-clause (e) of clause 12 of Annexure-A to SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

48. As per the above provisions, a broker shall return the credit balance of its clients if the clients have not traded in the 30 calendar days since the last transaction and such credit balances should be returned within next three working days irrespective of the date when the running account was previously settled.

49. Having gone through the allegation and DA Report, I agree that I need to examine delay in settlement in 56 instances pointed out by the DA. The *Noticee* submitted that there is no violation of non-settlement of inactive clients' funds. The *Noticee* also submitted that it was not maintaining the separate bank account to park the funds of inactive clients and as such the *Noticee* did not have any inactive clients. Further, the *Noticee*

submitted that the balances were paid to the inactive clients but there was a delay of 03 days to 36 days in 55 instances amounting to INR 26.88 Lakh due to limitations in back office software which lacked the capability to generate the alerts for payment to these clients having credit balances, who have not done any transaction in the 30 calendar days since the last transaction. Thus, the *Noticee* has accepted delay in these 55 instances.

50. Further, with respect to non-settlement of client fund of 1 client (1S92) on December 31, 2021, *Noticee* has submitted that there was no violation as January 01, 2022 and January 02, 2022 were holidays and that the client had traded on January 04, 2022. It is pertinent to note that the DA, in the Enquiry Report, observed that the client 1S92 had last traded on November 03, 2021 and thereafter, it traded only on January 04, 2022. Thus, the *Noticee* should have settled the outstanding credit balance of INR18.97 Lakh pertaining to client 1S92 on or before December 8, 2021, i.e. within 3 working days after the completion of 30 calendar days since the last transaction which was made on November 03, 2021. Considering that the client last traded on November, 03, 2021, I find that the *Noticee* should have settled the outstanding credit balance on or before December 08, 2021, which was not done by the *Noticee* even till the end of the month. Further, I note that the *Noticee* has not made any additional submission with regard to the observation made by the DA. In view of the same, I do not find any merit in the submission of the *Noticee*.

51. Even if the *Noticee* is claiming that the accounts were settled with a delay, the *Noticee* is obligated to comply with and follow the relevant rules and regulations. Further, it was obligatory on the part of the *Noticee* to be vigilant and take appropriate steps to identify inactive clients for the purpose of settlement.

52. In view of the aforesaid, I find that the *Noticee* has not settled credit balances of inactive clients within the stipulated timeline in 56 instances amounting to INR 49,39,030.78 (after reducing INR 9,900.55 with respect to instances which were accepted by the DA). Accordingly, the *Noticee* has violated the provisions of clause 5.4 of SEBI Circular No.

SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 read with clause 8.1.1 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and sub-clause (e) of clause 12 of Annexure-A to SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

III. Incorrect reporting of peak margin

53. During inspection, it was observed that the *Noticee* had incorrectly reported Peak Margin (2 clients; 2 instance) amounting to INR 11,11,086.71/-. The details are provided in the table below:

Table No. 5

Margin Date	**15/12/2021**	**20/12/2021**	
SEGMENT	**FO**	**CM**	
Client Code	**1R24**	**1G9**	**Total**
Total EOD Margin	3,78,45,795.88	-	
Total Peak Margin	4,22,65,456.68	8,91,911.02	
Collected Peak Margin	4,22,65,456.68	8,91,911.02	
Ledger Balance	4,06,61,156.19	-	
EPI of Securities	13,85,124.80	-	
Peak Ledger Balance (Funds + Collaterals)	4,20,46,280.99	-	
Wrong Reporting (In INR)	**2,19,175.69**	**8,91,911.02**	**11,11,086.71**

54. Violation as on December 15, 2022: The above table shows that as on December 15, 2021, the *Noticee* has allegedly reported the peak margin of INR 4,22,65,456.68 instead of INR 4,20,46,280.99 (peak ledger balance). The *Noticee*, in the reply, has submitted that it has considered the full 100% value of the Early Pay In (EPI) of securities as per its risk policy, amounting to INR 17,31,406 towards the payment of the

Peak margin. It is observed that the during inspection, 80% of the EPI value of securities, i.e. INR13,85,124.80 was considered.

55. Coming to the regulatory requirements, it is noted that as per the provisions of clause 4.1.2 and 4.1.5 of SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated, November 19, 2019 (refer page 25-26 of the order) read with clause 2 of SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/P/ 2020/146 dated July 31, 2020 (refer page 26 of the order), brokers are required to mandatorily collect upfront Value at Risk (VaR) margin and Extreme Loss Margin (ELM) from their clients. Further, brokers shall report peak margins to the Stock Exchanges.

56. In this regard, I note that as per Point 1 of Annexure A of NSE circular No. NSE/INSP/46485 dated November 27, 2020 read with SEBI Circular No. SEBI/HO/MRD2/DCAP/CIR/P/ 2020/127 dated July 20, 2020, "*In respect of sale of shares by a client for which early pay-in (EPI) has been accepted by CC and credit entry is posted of the sale value of the shares in the ledger account of the client, EPI value may be considered as margin collected towards subsequent margin requirement of the client.*

However, the sale value of such securities (EPI value), as reduced by value of the 20% upfront Margin, shall be available as Margin for other positions across all the segments."

57. I note that as per this circular, the *Noticee* should have computed only 80% of the value of EPI securities, i.e. INR 13,85,124.80 instead of the 100% of the value of EPI securities, i.e. INR 17,31,406. The DA has found the *Noticee* guilty on this count. I find that there is discrepancy in reporting of peak margin and the *Noticee* should have calculated the EPI value strictly in terms of applicable provisions as mentioned above. Therefore, I do not find any reason to deviate from the findings of the DA in this regard and find that the violation is established. .

58. Violation as on December 20, 2021: With respect to the EPI margin reported on December 20, 2021, the *Noticee* has submitted that for client code 1G9, the *Noticee*'s dealer had inadvertently punched a trade in the client name 1G9, which resulted in the

difference of INR 8,91,911.02. Upon realization of the same, the trade was rectified on the same day by offsetting the trade at the same time. For this trade, no margins were collected from the client 1G9. Hence, the *Noticee* submitted that the same was not reported. Further, the *Noticee* also mentioned that the client had not traded through the *Noticee* since July 28, 2021.

59. I note that the DA, in the Enquiry Report, has accepted the above submission made by the *Noticee* while taking into account an email confirmation received from the client regarding the incident that took place on December 20, 2021.

60. On perusal of the material available on record and the emails provided by the *Noticee*, I note that the *Noticee* had intimated the client regarding the trade that was inadvertently punched in its account. The *Noticee* has also placed on record the emails dated October 14, 2022 sent by the *Noticee* to the Client having client code 1G9, and also the client's reply to the same. Therefore, it appears that there was an inadvertent error on the part of *the Noticee* and the same was rectified by it. In view of the same, I agree with the finding of the DA.

61. In view of the above observations, I find that there has been wrong reporting in one instance, amounting to INR 2,19,175.69. Accordingly, I find that the *Noticee* has violated the provisions of clause 4.1.2 and 4.1.5 of SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated, November 19, 2019 read with clause 2 of SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/P/ 2020/146 dated July 31, 2020.

IV. Discrepancies in stock reconciliation –

62. During inspection, reconciliation of back office holding of clients' securities with actual stocks lying in all client/ collateral / margin DP accounts was carried out to ensure that all clients' securities are there in DP accounts of trading member. Further, verification of data uploaded by the *Noticee* with respect to Holding statement on a weekly basis with stocks lying in DP accounts was also carried out. It has been alleged that there is excess quantity as per DP holding (demat statements) in 19 ISIN resulting in mismatch

of shares of value INR 77,05,175.65. The relevant details are provided in the table below-

Table No. 6

Sr no.	ISIN	Quantity as per Weekly Holding Submission as on 30th July, 2022	Quantity as per Back Office Holding as on 30th July, 2022	Quantity as per Demat Account as on 30th July, 2022	Difference (INR)	Price as on 30th July, 2022 (INR)	Value as on 30th July, 2022 (INR)
1	INE699H01024	0	1000	1000	-1000	658.8	-6,58,800.00
2	INE947Q01028	0	2000	2000	-2000	522.7	-10,45,400.00
3	INE274V01019	0	5000	5000	-5000	707.25	-35,36,250.00
4	INE274G01010	0	1000	1000	-1000	41.3	-41,300.00
5	INE669E01016	0	1	1	-1	8.75	-8.75
6	INE855B01025	0	200	200	-200	176.25	-35,250.00
7	INE482A01020	0	50	50	-50	1260.55	-63,027.50
8	INE075A01022	0	110	110	-110	423.7	-46,607.00
9	INE148I01020	0	500	500	-500	110.05	-55,025.00
10	INE558B01017	0	3000	3000	-3000	119.7	-3,59,100.00
11	INE036A01016	0	4000	4000	-4000	117.1	-4,68,400.00
12	INE493A01027	0	250	250	-250	221.3	-55,325.00
13	IN9397D01014	0	1900	1900	-1900	293.35	-5,57,365.00
14	INE476A01014	0	100	100	-100	222.3	-22,230.00

Sr no.	ISIN	Quantity as per Weekly Holding Submission as on 30th July, 2022	Quantity as per Back Office Holding as on 30th July, 2022	Quantity as per Demat Account as on 30th July, 2022	Difference (INR)	Price as on 30th July, 2022 (INR)	Value as on 30th July, 2022 (INR)
15	INE876N01018	0	100	100	-100	116.15	-11,615.00
16	INE022Q01020	0	4000	4000	-4000	159.6	-6,38,400.00
17	INE075I01017	0	200	200	-200	269.5	-53,900.00
18	INE337A01034	0	28	28	-28	703.3	-19,692.40
19	INE079A01024	0	100	100	-100	374.8	-37,480.00
							-77,05,175.65

63. From the above table, I note that there was under-reporting of securities in 19 ISINs amounting to INR 77,05,175.65 in the weekly reporting to the exchanges, as securities as per back office holdings and demat accounts are same and matching.

64. As per the provisions of clause 2.3 of SEBI Circular No. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 (refer page 16 of the order), read with NSE Circular No. NSE/INSP/38743 dated August 30, 2018 (refer page 34 of the order) and NSE/INSP/39393 dated November 13, 2018 (refer page 34 of the order), a broker shall preserve its Register of Securities, Holding Statement, Bank Book and Client Ledger in the prescribed format and the records should periodically be reconciled with the actual collateral deposited with the broker.

65. In this regard, the *Noticee*, in its reply, has submitted that *Noticee* was reporting the shares which were transferred to the clearing member for the early pay-in. The *Noticee* also submitted that NSE has already penalized the *Noticee* vide order dated September 29, 2022, for the same incident of reporting excess balances of securities. Pursuant to

this, the *Noticee* stopped reporting the shares which are transferred to the clearing member for the early pay-in of shares.

66. I note that the DA, in the Enquiry Report, has taken into account the submissions made by the *Noticee* regarding penalization by NSE. DA also placed reliance on the submission of the *Noticee* that at the time of inspection, in February, 2021, NSE inspection team had also advised the *Noticee* to not report the EPI securities transferred to the clearing member. Consequently, the *Noticee* stopped reporting the securities. Later, a notice dated September 29, 2022 was issued by NSE and inspection was carried out in December, 2021 and NSE penalised the *Noticee* for not reporting the shares transferred to the clearing member for early pay-in (EPI). Due to the contradictory views of the NSE, the *Noticee* chose not to report the securities, which has led to under-reporting of the securities to the stock exchanges.

67. I further note that the DA, in the Enquiry Report, has observed that the *Noticee* has been penalised twice by the NSE, first for reporting the EPI securities transferred to the clearing member, and later for not reporting the EPI securities transferred to the clearing member. It is noted that the DA accepted the submission that due to the contrary advice and orders of NSE, the *Noticee* decided to not report the EPI securities transferred to the clearing member. Further, the DA observed that the non-compliance cannot be attributed to the *Noticee*, as it was following the earlier observation and advise of the NSE with respect to not reporting the EPI securities transferred to the clearing member.

68. I have perused the material available on record, the submissions made by the *Noticee,* orders dated September 20, 2022 & September 29, 2022 issued by NSE and find that there were contrary advice/ orders issued by NSE with respect to the issue of EPI. I note that the *Noticee* has, *inter alia,* made submissions in the present proceeding regarding inconsistent advice given by NSE with respect to reporting the securities transfer for EPI to the clearing member. Based on the documents submitted by the *Noticee*, I find that the said submissions have merit. Accordingly, the non-compliance cannot be attributed to the *Noticee*.

69. In view of the foregoing, I agree with the observation of the DA and find that the allegations are not established against the *Noticee*.

V. Client Funding

70. It was observed during inspection that the *Noticee* had funded total amount of INR 10.56 Lakh in four instances for 1 client out of sample 15 clients checked during the inspection. The details of the funding for the trades are provided below-

Table No. 7

Date of Bill	Transaction Remarks	Debit	Credit	Running Balance	Past 7th working Date	Ageing Balance (Unpaid Balance)	Client Code
03-Dec-21	Bill Posting for the SettNSEN2021228	52,071.35	0	(5,73,509)	22 Nov 2021	-3,64,086	IP3
07-Dec-21	Bill Posting for the SettNSEN2021230	7,30,388.99	0	(12,97,079)	24 Nov 2021	-5,14,562	IP3
08-Dec-21	Bill Posting for the SettBSEN2122172	1,46,811.25	0	(14,42,423)	25 Nov 2021	-5,13,123	IP3
08-Dec-21	Bill Posting for the SettBSET2122172	1,26,472.56	0	(13,09,553)	25 Nov 2021	-2,53,781	IP3

71. As per the provisions of clause 2.6 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (refer page 17-23 of the order) read with sub-clause (d) of clause 2 of SEBI circular No. CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/64 dated June 22, 2017 (refer page 23 of the order), a broker shall not grant further exposure to the clients when debit balances arise

out of client's failure to pay the required amount and such debit balances continue beyond the fifth trading day, as reckoned from the date of pay-in.

72. The DA, while dealing with the allegation of client funding, has observed that the *Noticee* has accepted the said allegation and has also admitted the occurrence of the error due to shortcomings in its risk management system in the trading software. DA also observed that the *Noticee* has violated the provisions of clause 2.6 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with sub-clause (d) of clause 2 of SEBI Circular No. CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/64 dated June 22, 2017.

73. The *Noticee* has submitted that the instance of client funding occurred inadvertently, as there was an error in the risk management system which allowed the trading software to execute trades for that specific client despite them having a debit balance. The client IP3 was updated as "1P3" in the risk management system as the *Noticee* has all client UCC numbers starting with 1. However, this particular client UCC code was open as IP3. Further, the *Noticee* has submitted that it has rectified these errors upon discovering them. It was also submitted that the debit balance of the client was recovered within 07 days instead of 05 days which was within the exchange allowed timeframe, and the client remained active in trading.

74. I have gone through the material on record and I note that the alleged violation took place on four instances during the month of December 2021, amounting to INR 10.56 Lakh. I find that the *Noticee* granted further exposure to the client when debit balances arose out of client's failure to pay the required amount and such debit balances continued beyond the fifth trading day. In my opinion, brokers should be aware of the importance of risk management while carrying on its business. Risk management is an overall process of identifying and understanding the full spectrum of an organisation's risk and taking informed actions to help it achieve its strategic objectives, reduce the likelihood of failure and decrease the uncertainty of overall business performance. This

may help in monitoring and mitigating all the risks faced by them and also increase value for investors/ clients.

75. In view of the above observations, I find that the *Noticee* has violated clause 2.6 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with sub-clause (d) of clause 2 of SEBI Circular No. CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/64 dated June 22, 2017.

VI. Disclosure of investor complaints on stock broker website

76. It has been alleged that the status of complaints against the *Noticee* for the month of August 2022 was not available on the *Noticee*'s website.

77. As per Clause 3 of SEBI Circular SEBI/ HO/MIRSD/DOP/P/CIR/2021 dated December 02, 2021:

"Additionally, in order to bring about transparency in the Investor Grievance Redressal Mechanism, it has been decided that all the Stock Brokers shall disclose on their respective websites, the data of complaints received against them or against issues dealt by them and redressal thereof, latest by 7th of succeeding month, as per the format enclosed at Annexure 'B' to this circular"

78. The DA observed that there was no evidence showing non-updation of status of complaints for the month August 2022 on the *Noticee*'s website. The DA found that the violation was not established.

79. The *Noticee* has submitted that all the required details were mentioned in the manner provided by the Exchange vide its circular. The *Noticee* submitted that it had shared the required links with SEBI via email and had also submitted a letter to SEBI which was certified by the CS, certifying that the *Noticee* is in compliance with the applicable provisions with regard to disclosure of data of complaints on the website.

80. I have perused the material available on record and I do not find any reason to disagree with the observations made by the DA. I find that the violation of provisions of SEBI

Circular No. SEBI/HO/ MIRSD/DOP/P/CIR/2021/676 dated December 02, 2021 against the *Noticee* does not stand established.

VII. Discrepancy in net-worth data submitted to the Exchange

81. It was alleged that the computation of net-worth submitted to the stock exchange was different from the computation made by the inspection team. The *Noticee* had submitted its net worth as on March 31, 2022 as INR 12,36,98,826 whereas as per the calculation of the inspection team, the net-worth on the same date was INR 12,33,14,892. Thus, the net-worth was over-stated by the *Noticee* to the extent of INR 3,83,933.93. Comparison of the net -worth data as per Noticee and Exchange is provided in the table below-

Table No. 8

Particulars	As per Net Worth Certificate (Rs.)	As per Exchange Working (Rs.)	Difference (Rs.)
	Amt in (Rs)	Amt in (Rs.)	
Share Capital	2,98,69,660.00	2,98,69,660.00	-
Reserves & Surplus	25,48,30,871.00	25,48,30,871.00	-
Total	28,47,00,531.00	28,47,00,531.00	-
Fixed Assets	54,33,239.00	54,33,239.00	-
Pledge Securities	4,30,29,252.00	4,30,29,252.47	-0.47
Member's Card	-	-	-
Non-allowable Securities (Unlisted Securities)	2,40,00,000.00	2,40,00,000.00	-
Bad Deliveries	-	-	-
Doubtful Debts & Advances	**35,18,333.00**	**39,02,266.80**	**-3,83,933.80**
Prepaid Expenses, losses	8,98,627.00	8,98,627.00	-

Intangible Assests	2,12,76,392.00	2,12,76,392.00	-
30% of Marketable securities	6,28,45,862.00	6,28,45,861.66	0.34
Net Worth	12,36,98,826.00	12,33,14,892.07	3,83,933.93
			0.31%

82. It was further observed that the overstatement has arisen due to the reasons detailed in the table below-

Table No. 9

Particulars	**Amount as per NSE (INR)**	**Amount as per Member/ *Noticee* (INR)**
Debtors outstanding for more than 90 days	4,10,731.80	4,26,798.00
Capital Advances	30,91,535.00	30,91,535.00
Security Deposits	4,00,000.00	0
Total	39,02,266.80	35,18,333.00

83. It has also been alleged that the *Noticee* has not complied with the computation of net-worth and the same has not been made as per Dr. L C Gupta method (provided in NSE Circular No. NSE/COMP/48895 dated July 10, 2021) which specifies liquid net-worth of the trading member. It has been alleged that the *Noticee* has not complied with the clarifications regarding net-worth computation provided under Annexure A to NSE Circular No. NSE/COMP/48895 dated July 10, 2021 (refer to page 26-27 of the order) and sub-clause (5) of clause A of Schedule II read with sub-regulation (f) of regulation 9 Stock Brokers Regulations.

84. The *Noticee* has submitted that while calculating security deposits, it has also considered deposits which were made for business purpose, such as electricity deposit, rent deposit, lease line deposit. The *Noticee* also submitted that these deposits play a crucial role in the seamless functioning of the company and are integral to its operations and none of the clauses of the circular in question are applicable in this case. The *Noticee* also submitted that it had conservatively deducted amounts from debtors

outstanding for more than 30 days instead of 90 days as bad and doubtful debts resulting in an excess deduction of INR 16,066.20 compared to NSE's calculation which is allowed as per extant circular. The *Noticee* has further submitted that the computation of net-worth as on March 31, 2022, has also been certified by its statutory and internal auditors

85. The DA, while deliberating on the issue, has observed that as per Dr. L C Gupta formula, debtors outstanding for more than 90 days should be considered as doubtful debts. However, the *Noticee* has considered debtors older than 30 days as doubtful. Thus, the *Noticee* has followed an even more conservative approach, and this has led to under-statement of the net-worth by INR 16,066.20. In view of the same, the DA observed that there is no violation so far as the calculation of debtors outstanding is concerned.

86. I note that point 6 of Annexure A to NSE Circular NSE/COMP/48895 dated July 10, 2021 deals with "Doubtful Debts and advances" which clearly states as under-

"This shall include:-

- *Debts or advances overdue for more than three months*

For instance: Debit Balance in the trading account of client 'A' as on Dec 01, 2020 – Rs. 1000. If the amount is not received till March 31, 2021, then the outstanding amount as on March 31, 2021 is to be reduced from the Networth (since the amount is outstanding for more than three months)"

87. I note that though, in terms of Dr. L C Gupta formula, the *Noticee* should have considered debtors outstanding for more than 90 days as doubtful debts, the *Noticee* considered debtors older than 30 days as doubtful. However, I agree with the observation of the DA that the *Noticee* has taken a conservative approach which led to understatement by a meagre amount of INR 16,066.20 and found no violation so far as the calculation of debtors outstanding is concerned.

88. With respect to the security deposits which have been considered by the *Noticee* in calculation of net-worth, DA observed that the LC Gupta formula and the clarifications provided by the NSE Circular nowhere specify that the security deposits made for utilities like leased line, rent, electricity, etc. should not be considered for computation of net-worth. The DA noted that the *Noticee* had submitted a copy of its audited financial statements in which the deposits have been recognised at the same value. The DA observed that in the absence of any specific provision or principle which requires the security deposits to utility companies being disallowed for computation of net-worth, the allegation of violations of Annexure A to NSE Circular No. NSE/COMP/48895 dated July 10, 2021 and sub-clause (5) of clause A of Schedule II read with sub-regulation (f) of regulation 9 Stock Brokers Regulations, do not stand established.

89. On perusal of the material on record and the submissions made by the *Noticee*, I am inclined to agree with the observation of the DA regarding security deposits made for utilities like leased line, rent, electricity, etc. I note that the Net worth computation as per Dr. L. C. Gupta method specifies liquid net worth of the trading member. In my opinion, the NSE Circular No. NSE/COMP/48895 dated July 10, 2021 lacks clarity regarding security deposits made for leased line, rent and electricity.

90. In view of the above observations, I find that the allegation of violations of Annexure A to NSE Circular No. NSE/COMP/48895 dated July 10, 2021 and sub-clause (5) of clause A of Schedule II read with sub-regulation (f) of regulation 9 Stock Brokers Regulations do not stand established.

VIII Discrepancies in reporting of enhanced supervision data on weekly basis

91. It has been alleged that the *Noticee* had incorrectly reported the data towards weekly monitoring of client funds for the following dates: July 09, 2021, July 30, 2021, March 17, 2022, March 25, 2022 and July 29, 2022.

92. In addition to above, it has also been alleged that upon verification of Top 10 highest Debtors / Creditors with Ledgers provided by the *Noticee*, differences were observed

in balance as per Trial Balance provided by the *Noticee* and balance as per the Client Ledger. The differences are small and as follows:

Table No. 10

Date	AC Code	Balance as per Trial Balance (INR)	Balance as per client ledger (INR)	Difference ((NR)
09-07-2021	1A37	1,74,166.99	1,74,270.29	-103.3
09-07-2021	1M22	5,564.67	5,624.67	-60.00
09-07-2021	1N296	1,20,181.86	1,20,153.01	28.85
				-134.45

93. It has been alleged that the *Noticee* has violated clause 3.2 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (refer to page 17 - 23 of the order) read with NSE Circular No. NSE/INSP/33276 dated September 27, 2016 (refer to page 32 of the order).

94. I note that as per clause 3.2 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with NSE Circular No. NSE/INSP/33276 dated September 27, 2016, stock brokers shall submit enhanced supervision data as on the last trading day of every week to the stock exchanges on or before the next trading day.

95. Further, I note that the NSE Circular No. NSE/ INSP/31912 dated March 07, 2016 pertains to Tagging/ Flagging of Demat/ Bank accounts of trading / clearing member.

96. I will be dealing with each allegation (date wise) pertaining to discrepancies in reporting of enhanced supervision data on weekly basis, in the following paragraphs.

97. **Incorrect reporting of data on July 09, 2021 –**

I. It has been alleged that the *Noticee* had incorrectly reported the data towards weekly monitoring of client funds on July 09, 2021. As per the Enquiry Report, differences observed in the details submitted by the *Noticee* vis-à-vis figures calculated by the inspection team are depicted in the following table:

Table No. 11

Sr.No	Particulars	Inspection Team Calculation	*Noticee*'s Submission	Difference
B	Collateral deposited with exchanges in form of Cash and Cash Equivalents (INR)	3,21,88,300.00	3,43,00,000.00	-21,11,700.00
B	Collateral deposited with clearing member in form of Cash and Cash Equivalents (In INR)	9,37,81,634.91	19,37,81,635.00	-10,00,00,000.09
C	Total Credit Balance of all clients (INR)	21,55,27,363.34	21,24,54,724.00	30,72,639.34
D	Total debit balance of all clients (INR)	6,62,01,401.22	6,31,28,762.00	30,72,639.22
E	Value of **Own Securities** Deposited as Collateral with Clearing corporation (INR)	-	13,76,600.00	-13,76,600.00
E	Value of **Own Securities** Deposited as Collateral with	3,46,60,033.65	3,30,26,241.00	16,33,792.65

Sr.No	Particulars	Inspection Team Calculation	*Noticee*'s Submission	Difference
	Clearing Member (INR)			
F	Value of Non funded portion of the Bank Guarantee (INR)	8,19,38,300.00	8,37,50,000.00	-18,11,700.00
MF	Free/unblocked Collateral deposited with Clearing corporation (INR)	2,42,59,486.00	2,45,59,486.00	-3,00,000.00
MF	Free/unblocked Collateral deposited with Clearing Member (INR)	12,42,64,429.97	22,42,64,430.00	-10,00,00,000.03

II. It is pertinent to note that the Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 has provided clarity with respect to the data that has to be submitted by Stock brokers as on last trading day of every week to the Stock Exchanges on or before the next trading day.

III. The *Noticee*, with regard to the allegation of incorrect reporting on July 09, 2021, specifically made submissions regarding Sr. No. B, E and F mentioned in Table No. 11 and that it did not agree with the same.

IV. **With respect to difference of INR 21,11,700 at Sr. No. B** in Table No. 11 above the *Noticee* submitted that the inspection team did not consider the MLN deposit and TGF. The DA considered an amount of INR 10 Lakh (TGF) and gave benefit of the same to the *Noticee*. However, the DA observed that MLN deposit are not to be considered as collateral deposited with the exchanges. Therefore, DA observed that the *Noticee* had overstated Collateral deposited with exchanges in form of Cash and Cash Equivalents by INR 11,11,700.

V. In my view MLN cannot be considered as collateral in the form of Cash and Cash Equivalents as discussed above. Further, as discussed in preceding paragraphs TGF can be considered as collateral. Accordingly, I find that the *Noticee* had overstated Collateral deposited with exchanges in form of Cash and Cash Equivalents by INR 11,11,700.

VI. **With respect to difference of INR 10 crore in Sr. No. B** – The Noticee submitted that it had issued cheques of INR 10 Crore to the clearing member, which were cleared subsequently and as the cheques were not cleared on July 09, 2021 and the inspection team has not considered this amount. The DA, with respect to this point, has observed that uncleared cheques lying with the clearing member cannot be considered as collateral as per Annexure A of the Exchange Circular No. NSE/INSP/35412 dated July 20, 2017.

VII. With respect to collateral deposited with clearing member in form of Cash and Cash Equivalents, the *Noticee* has submitted that it had issued cheques of INR 10 crore to the clearing member, which were cleared subsequently and as the cheques were not cleared on July 09, 2021, inspection team has not considered this amount. DA observed that the uncleared cheques lying with the clearing member cannot be considered as collateral as per Annexure A of the Exchange Circular No. NSE/INSP/35412 dated July 20, 2017. I find that the submission regarding the cheque of INR 10 Crore issued by the *Noticee* to the clearing member cannot be accepted as the same was yet to be cleared and unless it is cleared, uncertainty with regard to realisation of amount remains. Accordingly, I find that the *Noticee* has had overstated Collateral deposited with clearing member in form of Cash and Cash Equivalents by INR 10 Crore.

VIII. **With respect to the understatement of INR 30,72,639.34 (Sr. No. C i.e. Total Credit Balance of all clients) and INR 30,72,639.22 (Sr. No. D i.e. total Debit balance of all clients)**, the *Noticee* has not made any specific submissions in this proceeding. However, DA, in the Enquiry Report, *inter alia*, observed that

the *Noticee* had accepted the allegation. In absence of any additional submission by the *Noticee*, I find that the *Noticee* had overstated the amounts at Sr. No. C and D by INR 30,72,639.34 and INR 30,72,639.22 respectively.

IX. **With respect to allegation of overstatement of Value of Own Securities Deposited as Collateral with Clearing corporation by INR 13,76,600 (Sr. No. E),** the *Noticee* had submitted that the inspection team wrongly calculated the securities valuation with the clearing corporation. I note that the DA has accepted the submission of the *Noticee*.

X. I have perused the submissions made by the *Noticee* including the screenshot of the Client Security Report for the date of July 09, 2021, taken from the BSE portal, which showed that the *Noticee* had pledged 10000 own shares of AGL with the ICCL on July 09, 2021. In view of the same, I do not find any reason to disagree with the observation of the DA and I find that there is no violation.

XI. **With respect to understatement of value of Own Securities Deposited as Collateral with Clearing Member by INR 16,33,793 (Sr. No. E)**, the *Noticee* has not made any specific submission in the extant proceeding. The DA, with respect to this point, observed that the *Noticee* should have considered Value at Risk (VaR) instead of Conditional Value at Risk (CVaR), which has led to understatement of Value of Own Securities Deposited as collateral with Clearing Member by INR 16,33,793. In absence of any specific submission of the *Noticee* on this count, I do not find any reason to disagree with the observation of the DA. I find that the *Noticee* has understated the value of Own Securities Deposited as Collateral with Clearing Member by INR 16,33,793.

XII. **With respect to over-statement of value of Non-funded portion of the Bank Guarantee by INR 18,11,700 (Sr. No. F)**, the *Noticee* has submitted that it was having total bank guarantee of INR 16,75,00,000 out of which 50% BG are Non-funded. Hence, the *Noticee* had taken INR 8,37,50,000 whereas inspection team had taken INR 8,19,38,300. With respect to this point, the DA has

observed that MLN deposit cannot be considered for calculation of non-funded portion of bank guarantee and that the *Noticee* had incorrectly considered the value of MLN deposit to calculate value of non-funded portion of bank guarantee. Based on the discussion on MLN in the preceding paragraphs, I agree with the observation of the DA and I find that the *Noticee* has over-stated the value of Non-funded portion of the Bank Guarantee by INR 18,11,700.

XIII. **With respect to the difference of INR 3 Lakh in Sr. No. MF** - Free/unblocked Collateral deposited with Clearing corporation, the *Noticee* has not made any specific submission regarding the same. Accordingly, I find that difference of INR 3 lakh is undisputed.

XIV. **With respect to the difference of INR10 crore in Sr. No. MF** - Free/unblocked Collateral deposited with Clearing Member, the DA has observed that uncleared balances with clearing member (i.e. uncleared cheque of INR 10 Crore) are not to be considered for free / unblocked collateral deposited with clearing member as per NSE Circular No. NSE/INSP/35412 dated July 20, 2017. I note that the *Noticee* has not made any specific submission regarding the same. In view of the observations made in the preceding paragraphs regarding uncleared cheques, I do not find any reason to disagree with the observation of the DA. I find that the *Noticee* had over stated the amount by INR 10 Crore.

XV. In view of the above, I find that the *Noticee* had reported incorrect figures for Sr. Nos. B (difference of INR 11,11,700 and INR 10 Crore), C (difference of INR 30,72,639.34), D (difference of INR 30,72,639.22), E (difference of INR 16,33,792.65), F (difference of INR 18,11,700.00) and MF (difference of INR 3 Lakh and INR 10 Crore) on July 09, 2021.

98. <u>Incorrect reporting of data on July 30, 2021</u> –

I. During inspection, differences observed in the details submitted by the *Noticee* vis-à-vis figures calculated by the inspection team are depicted in the table below.

Table No. 12

Sr.No	Particulars	Inspection Team Calculation	Member Submission	Difference
B	Collateral deposited with exchanges in form of Cash and Cash Equivalents (INR)	4,71,93,920.50	4,90,00,000	-18,06,079.50
E	Value of **Own Securities** Deposited as Collateral with Clearing corporation (INR)	0	13,87,841	-13,87,841.00
F	Value of Non funded portion of the Bank Guarantee (INR)	8,19,43,920.50	8,37,50,000	-18,06,079.50
MC	Margin utilized for positions of Credit Balance Clients (INR)	14,20,75,735.89	14,20,81,986	-6,250.11

II. **With respect to difference of INR 18,06,080 at Sr. No. B** (Collateral deposited with exchanges in form of Cash and Cash Equivalents), the *Noticee* has submitted that the inspection team has not considered MLN deposit and TGF. I note that with respect to this point, the DA has considered old TGF balance of INR 10 Lakh as collateral deposited with the exchanges. Further, the DA also observed that MLN cannot be considered as collateral deposited with the exchanges. In view of my findings on TGF and MLN deposits in the preceding paragraphs, I agree with the observation of the DA. Accordingly, I find that the *Noticee* has overstated Collateral deposited with exchanges in form of Cash and Cash Equivalents by INR 8,06,080.

III. **With respect to allegation of overstatement of Value of Own Securities Deposited as Collateral with Clearing corporation by INR13,87,841 (Sr. No. E),** The DA has not found any violation on this point after considering the screenshot of the Client Security Report for the date of July 30, 2021, taken from the BSE portal, which shows that the *Noticee* had pledged 10000 own

shares of Asian Granito India Limited with the ICCL on July 30, 2021. The DA also confirmed the same from the Total Liquid Assets Breakup Report for the date of July 30, 2021.). I note that the *Noticee,* in the extant proceeding, has submitted a screenshot dated July 30, 2021 of the ICCL website showing value of own securities deposited by the *Noticee* as collateral with Clearing Corporation. I am inclined to accept the observations made by the DA with respect to Sr. No. E.

IV. **With respect to over-statement of Value of Non funded portion of the Bank Guarantee by INR 18,06,080 (Sr. No. F),** the *Noticee* submitted that they were having total BG of INR 16,75,00,000 out of which 50 % BG are non funded. Hence, the *Noticee* took the amount INR 8,37,50,000 instead of INR 8,19,43,920.50. I note that the DA found the violation established on this point on the ground that MLN cannot be considered for calculation of non-funded portion of bank guarantee. In view of the observation made above regarding MLN, I agree with the finding of the DA. I find that the *Noticee* has over-statement of Value of Non funded portion of the Bank Guarantee by INR 18,06,080.

V. **With respect to over-statement Margin utilized for positions of Credit Balance Clients by INR 6,250 (Sr. No. MC),** the *Noticee* has accepted the allegation and submitted before the DA that it had inadvertently calculated the margin utilised across segment instead of calculating the same segment-wise. In the instant proceedings the *Noticee* has not made any specific submission to counter the allegation. Accordingly, I find that the violation is established on this point.

VI. In view of the above observations, I find that as on July 30, 2021, there was discrepancy in reporting of enhanced supervision data on weekly basis with respect to Sr. Nos. B (difference of INR 8,06,080), F (difference of INR 18,06,079.50) and MC (difference of INR 6,250.11).

99. Incorrect reporting of data on March 17, 2022 –

I. Based on the inspection conducted by SEBI, differences observed in the details submitted by the *Noticee* vis-à-vis figures calculated by the inspection team are depicted in the table below:

Table No. 13

Sr.No	Particulars	Inspection Team Calculation	Member Submission	Difference
B	Collateral deposited with exchanges in form of Cash and Cash Equivalents (INR)	2,95,50,000.00	3,11,50,000.00	-16,00,000.00
E	Value of **Own Securities** Deposited as Collateral with Clearing Member (INR)	8,25,67,527.96	8,39,67,710.00	-14,00,182.04
F	Value of Non funded portion of the Bank Guarantee (INR)	8,12,50,000.00	8,37,50,000.00	-25,00,000.00
MC	Margin utilized for positions of Credit Balance Clients (INR)	3,34,46,713.13	4,44,37,827.00	-1,09,91,113.87

II. **With respect to difference of INR 16 Lakh at Sr. No. B** (Collateral deposited with exchanges in form of Cash and Cash Equivalents), the *Noticee*, in the extant proceeding, submitted that the Inspection team did not consider the TGF and MLN deposits with the exchange. I note that the DA has considered that the old TGF deposit of INR 10 Lakh is to be considered as collateral deposited with the exchanges. DA has also observed that MLN should not be considered as collateral. In view of the observations made above regarding TGF and MLN in the preceding paragraphs, I agree with the finding of DA on this point. Accordingly, after considering INR 10 Lakh (TGF), I find that the *Noticee* has over stated Collateral deposited with exchanges in form of Cash and Cash Equivalents by INR 6,00,000.

III. **With respect to allegation of overstatement of Value of Own Securities Deposited as Collateral with Clearing corporation by INR14,00,182** (Sr. No. E), the *Noticee* has submitted that the inspection team has wrongly calculated the securities valuation with the clearing corporation. The DA, on this point, has considered the copies of demat security statement generated through the clearing member for cash and F&O segment and observed that the *Noticee* has not submitted any document showing that the securities were deposited with ICCL. I note that the *Noticee* has not made any additional documents in support of its submission. In this regard, I do not find any reason to disagree with the observation made by the DA. I find that the *Noticee* has overstated the of Value of Own Securities Deposited as Collateral with Clearing corporation by INR14,00,182.

IV. **With respect to over-statement of Value of Non-funded portion of the Bank Guarantee by INR 25 Lakh (Sr. No. F**), the *Noticee* has submitted that it was having total bank guarantee of INR 16,75,00,000 out of which 50% BG are Non-funded. Hence, the *Noticee* had taken INR 8,37,50,000 whereas inspection team has taken INR 8,12,50,000. In this regard, the DA has observed that MLN deposit is not to be considered for calculation of non-funded portion of bank guarantee. I note that the *Noticee* has considered MLN while arriving at the calculation of INR 8,37,50,000. In view of the observation regarding MLN made in preceding paragraphs, I agree with the observation of the DA and I find that MLN deposit cannot be considered to calculate value of non-funded portion of bank guarantee. Accordingly, I find that the *Noticee* has over stated Value of Non-funded portion of the Bank Guarantee by INR 25 Lakh.

V. **With respect to over-statement Margin utilized for positions of Credit Balance Clients by INR 1,09,91,113.87 (Sr. No. MC)**, the *Noticee* has accepted the allegation and submitted that it had inadvertently calculated the margin utilised across segment instead of calculating the same segment-wise.

In view of the same, I find that the *Noticee* has over stated the Margin utilized for positions of Credit Balance Clients by INR 1,09,91,113.87.

VI. In view of the above observations, I find that as on March 17, 2022, there is incorrect reporting of enhanced supervision data with respect to Sr. Nos. B (difference of INR 6,00,000), Sr. No. E (difference of INR 14,00,182.04), Sr. No. F (Difference of INR 25 Lakh) and Sr. No. MC (difference of INR 1,09,91,113.87).

100. Incorrect reporting of data on March 25, 2022 –

I. Based on the inspection conducted by SEBI, differences observed in the details submitted by the *Noticee* vis-à-vis figures calculated by the inspection team are depicted in the table below.

Table No. 14

Sr.No	Particulars	Inspection Team Calculation	Member Submission	Difference
B	Collateral deposited with exchanges in form of Cash and Cash Equivalents (INR)	2,95,50,000.00	3,11,50,000	-16,00,000.00
F	Value of Non funded portion of the Bank Guarantee (INR)	8,12,50,000.00	8,37,50,000	-25,00,000.00
MC	Margin utilized for positions of Credit Balance Clients (INR)	2,00,86,480.73	3,66,73,420	-1,65,86,939.27

II. **With respect to Sr. No. B - Collateral deposited with exchanges in form of Cash and Cash Equivalents (difference of INR 16 Lakh**), the *Noticee*, in the submitted that the Inspection team did not consider the TGF and MLN deposit

with the exchange. The DA, with respect to this point, has observed that MLN should not be considered as collateral. Additionally, the DA has also considered that the old TGF deposit of INR 10 Lakh is to be considered as collateral deposited with the exchanges. In view of the observations regarding TGF and MLN made in the preceding paragraphs, I agree with the finding of DA in this point. Accordingly, after considering INR 10 Lakh (TGF), I find that the *Noticee* has over stated Collateral deposited with exchanges in form of Cash and Cash Equivalents by INR 6,00,000.

III. **With respect to over-statement of Value of Non-funded portion of the Bank Guarantee by INR 25 Lakh (Sr. No. F),** the *Noticee* has submitted that it was having total bank guarantee of INR 16,75,00,000 out of which 50% BG are Non-funded. Hence, the *Noticee* had taken INR 8,37,50,000 whereas inspection team has taken INR 8,12,50,000. In this regard, the DA has observed that MLN deposit is not to be considered for calculation of non-funded portion of bank guarantee. I find that on this point, the *Noticee* has incorrectly considered the value of MLN deposit due to which there is incorrect reporting of data. In view of the observation regarding MLN made in preceding paragraphs, I agree with the observation of the DA and I find that the *Noticee* has over stated Value of Non-funded portion of the Bank Guarantee by INR 25 Lakh.

IV. **With respect to over-statement of MC - Margin utilized for positions of Credit Balance Clients by INR 1,65,86,939 (Sr. No. MC),** I note that the *Noticee*, in its submissions, has not contested the findings of the inspection. Accordingly, the allegation with respect to this point stands established.

V. In view of the above observations, I find that as on March 25, 2022, there is incorrect reporting of enhanced supervision data with respect to Sr. Nos. B (difference of INR 6,00,000), Sr. No. F (difference of INR 25 Lakh) and Sr. No. MC (Difference of INR 1,65,86,939.27.

101. Incorrect reporting of data on July 29, 2022 –

I. During the inspection, differences observed in the details submitted by the *Noticee* vis-à-vis figures calculated by the inspection team are depicted in the table below.

Table No. 15

Sr.No	Particulars	Inspection Team Calculation	Member Submission	Difference
B	Collateral deposited with exchanges in form of Cash and Cash Equivalents (INR)	1,16,00,000.00	1,26,00,000	-10,00,000.00
C	Total Credit Balance of all clients (INR)	61,97,54,535.19	61,89,15,747	8,38,788.19
D	Total debit balance of all clients (INR)	12,97,757.66	4,58,969	8,38,788.66
E	Value of **Own Securities** Deposited as Collateral with Clearing Member (INR)	8,45,31,477.25	8,34,92,807	10,38,670.25
F	Value of Non-funded portion of the Bank Guarantee (INR)	6,25,00,000.00	6,50,00,000	-25,00,000.00
MC	Margin utilized for positions of Credit Balance Clients (In Rs.)	55,21,735.88	38,69,313	16,52,422.88

II. With respect to difference of INR10 lakh in Sr. No. B - Collateral deposited with exchanges in form of Cash and Cash Equivalents, the *Noticee*, in the submitted that the Inspection team did not consider the TGF and MLN deposit with the exchange. The DA, with respect to this point, has observed that MLN should not be considered as collateral. Additionally, the DA has also considered that the old TGF deposit of INR 10 Lakh is to be considered as collateral deposited with the exchanges. DA, in the Enquiry Report, has noted that the *Noticee* had also submitted the Total Liquid Assets break-up report as on July 29, 2022 in which old TGF deposit of INR 10 lakh and MLN of INR 50 lakh was mentioned. The DA accepted the *Noticee*'s contention only with respect to the old TGF balance of INR 10 lakh and observed that the *Noticee* has overstated Collateral deposited with exchanges in form of Cash and Cash Equivalents by INR 6 Lakh.

III. I have perused the material on record and note that the inspection revealed that the *Noticee* had overstated the collateral deposited with exchanges in form of cash and cash equivalent by INR 10 Lakh with respect to Sr. No. B. In view of the observations regarding MLN and TGF made in the preceding paragraphs, I agree that TGF of INR 10 Lakh should have been considered while calculating the collateral deposited with exchanges in form of cash and cash equivalents. However, it is not clear how the DA has come to the finding of overstatement of the collateral by INR 6 Lakh. If the submission of the *Noticee* regarding old TGF deposit is accepted, then the *Noticee* has correctly reported the collateral deposited with exchanges in form of Cash and Cash Equivalents. Accordingly, I find that there is no error in reporting in Sr No. B.

IV. **With respect to the understatement in total debit balance as well as total credit balance of all clients by INR 8,38,788 (Sr. No. C and D),** I note that the *Noticee* has submitted that it had received cheque of this amount from debit balance client, which it had inadvertently deducted from the total credit balance of clients, leading to understatement of both total debit balance and total credit

balance of all clients. It is observed that the *Noticee* has accepted the error in reporting the amount with respect to Sr. No. C and D.

V. **With respect to allegation of overstatement of value of own securities deposited as collateral with Clearing Corporation by INR 10,38,670.25 (Sr. No. E),** I note that the *Noticee* in the submissions before the DA has accepted the allegation. In the extant proceedings the *Noticee* has not made any specific submission regarding this allegation. In view of the same, I find that the allegation is established.

VI. **With respect to over-statement of Value of Non-funded portion of the Bank Guarantee by INR 25 Lakh (Sr. No. F),** the *Noticee* has submitted that it was having total bank guarantee of INR 16,75,00,000 out of which 50% BG are Non-funded. Hence, the *Noticee* had taken INR 8,37,50,000 whereas inspection team has taken INR 8,12,50,000. In this regard, the DA has observed that MLN deposit is not to be considered for calculation of non-funded portion of bank guarantee. I find that on this point, the *Noticee* has incorrectly considered the value of MLN deposit due to which there is incorrect reporting of data. In view of the observation regarding MLN made in preceding paragraphs, I agree with the observation of the DA and I find that the *Noticee* has over stated Value of Non-funded portion of the Bank Guarantee by INR 25 Lakh.

VII. **With respect to over-statement of margin utilized for positions of Credit Balance Clients by INR 16,52,423 (Sr. No. MC),** I note that the *Noticee* has accepted the allegation and submitted that it had inadvertently calculated the margin utilised across segment instead of calculating the same segment-wise. Accordingly, I find that the charge at Sr. No. MC is established and needs no further deliberation.

VIII. In view of the above observations, I find that as on July 29, 2022, there is incorrect reporting of enhanced supervision data with respect to Sr. Nos. C (difference of INR 8,38,788), Sr. Nos. D (difference of INR INR 8,38,788), Sr.

No. E (difference of INR 10,38,670.25), Sr. No. F (difference of INR 25 Lakh) and Sr. No. MC (Difference of INR 16,52,423).

102. With respect to the observations of the minor difference in balance as per client ledger vis-à-vis client trial balance (refer para 92, Table No. 10 of this order), the *Noticee* submitted the following.

I. Client Code – 1A37 – Due to calculation error, brokerage rebate credited to the client was short by INR103.30. The inadvertent error occurred on July 09, 2021 and was corrected by the *Noticee* on July 15, 2021

II. Client Code – 1M22 – Dividend of INR60 received on July 03, 2021, pertaining to the client was recorded in the client ledger with a delay, on July 19, 2021.

III. Client Code – 1N296 – GST amount of INR 28.85 was not applied to the brokerage and transactions made by the client on June 25, 2021. Subsequently, the entry was manually made on July 23, 2021.

103. I note that the *Noticee* has accepted the allegations made with respect to difference in balance as per client ledger vis-à-vis client trial balance and submitted that the same had resulted due to inadvertent clerical mistake. Further, I note that the DA has also observed the same. In view of this, I find that the charge with respect to difference in balance as per client ledger vis-à-vis client trial balance, stands established.

104. In view of the above observations, I find that the *Noticee* has violated the provisions of Clause 3.2 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with NSE Circular NSE/INSP/33276 dated September 27, 2016.

IX. Discrepancies in reporting of enhanced supervision data on monthly basis

105. It was observed during inspection that in 88 instances, the *Noticee* had not reported the details of 87 clients having 'Nil' balance and not having traded during last 12 months

from the reporting date, in cash and cash equivalent submission of the enhanced supervision data to the exchanges.

106. As per the provisions of clause 7 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (refer to page 17 - 23 of the order), a broker shall provide various data to the stock exchanges on monthly basis within 7 trading days of the last trading day of the month. The data to be provided includes exchange wise End of Day (EOD) balances as per the client ledger.

107. I note that the *Noticee*, in the submissions, has submitted that during the financial year closing on March 31, 2022, the last day of trading for each client was not updated in the new database for the financial year 2022-2023. Consequently, clients with a zero balance and who had not traded in the financial year 2022-23 were not reflected in the reports as the back office system lacked the last trading date information. The *Noticee* also submitted the issue was addressed on August 25, 2022 and rectified immediately.

108. The DA on this count found the violations established from the above submission of the *Noticee* it is evident that there was an error on the part of the *Noticee* to report the clients with a zero balance as per the Circular dated September 26, 2016. The *Noticee* itself has accepted that the error was subsequently rectified. In view of the above submissions and material available on record, I find that the *Noticee* has violated the provisions of clause 7 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

X. Discrepancies in risk based supervision data reporting

109. It has been alleged that the *Noticee* had not correctly reported the details of total available collaterals from all debit balance clients. The *Noticee* had reported the value of total available collaterals from all debit balance clients as INR 44,55,470.20, whereas, as per the inspection team, the reported value should have been INR 5,83,51,150. Thus, it has been alleged that the *Noticee* had under-reported the value of collaterals from the debit balance clients by INR 5,38,95,679.80 and thereby violated

the provisions of sub-clause (e) of clause 6.1.1. of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with NSE Circular No. NSE/ INSP/28925 dated February 20, 2015 and NSE Circular No. NSE/INSP/ 50229 dated November 08, 2021.

110. I note that sub-clause (e) of clause 6.1.1 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (refer to page 17-23 of the order), states as under-

"6.1.1.Monitoring criteria for Stock Brokers

e. Failure to submit data for the half yearly Risk Based Supervision within the time specified by Stock Exchange."

111. Further, I note that NSE circular No. NSE/INSP/28925 dated February 20, 2015 deals with risk based supervision and submission of information for half year ended September 30, 2014. Further, NSE Circular No. NSE/ INSP/50229 dated November 08, 2021, *inter alia*, deals with submission of information for the period April 01, 2021 – September 30, 2021 in prescribed format for risk based supervision.

112. In response to the allegation, the *Noticee* submitted that the total available collaterals from all debit balance clients on the last day of the assessment period, as stated in Point No 23 of NSE Circular No. NSE/INSP/50229 dated November 08, 2021, was considered. The *Noticee* pointed out that the circular reads: "*Total available collaterals (Free & un-encumbered) from debit balance clients (as considered for the above point) as of September 30, 2021*." In this regard, the *Noticee* had interpreted that the securities which are re-pledged with the clearing member or clearing corporations cannot be considered as free and unencumbered, and thus, the same have not been reported by the *Noticee*. The *Noticee* had further submitted that the NSE has not provided any clarification in this regard. The DA, in the Enquiry Report, has observed that the above interpretation of the *Noticee* is incorrect.

113. The DA has observed that the securities of the debit balance clients which are pledged with the *Noticee* cannot be distinguished from the securities pledged with clearing member or clearing corporations in terms of encumbrance. DA also observed that free and unencumbered collaterals include those securities which have not been pledged by the clients for financing from lenders or such other purposes. Thus, the securities pledged with the broker or re-pledged with the clearing member or clearing corporation cannot be considered as encumbered, and are to be considered for calculating the total available collaterals from all debit balance clients.

114. I note that the said NSE Circulars dated February 20, 2015 and November 08, 2021 specifically deal with risk based supervision. I further note that as per point 23 of Annexure A to Circular No. NSE/INSP/50229 dated November 08, 2021, the trading member is required to report "total available collaterals from all debit balance clients as on last day of the Assessment period". The inclusion mentioned against the requirement of the said reporting is mentioned as "*Total available collaterals (Free & un-encumbered) from debit balance clients (as considered for the above point) as on September 30, 2021*." I note that the *Noticee* has referred to interpretational differences with respect to the term "Free & un-encumbered" referred in the said NSE Circular dated November 08, 2021. I note that the *Noticee* has reported only the value of collateral from the debit balance clients, which was pledged with them and not re-pledged with Clearing Corporation/ Clearing Member.

115. It is pertinent to note that NSE, vide Circular No. NSE/INSP/61572 dated April 12, 2024, has issued clarification with respect to Point 23 i.e. requirement to report "total available collaterals from all debit balance clients as on last day of the Assessment period". The requirement at Point No. 23 of Annexure A mentioned both the NSE Circulars dated November 08, 2021 and April 12, 2024 is highlighted in the table below-

Table No. 16

Point No.	Requirement	Circular No. NSE/INSP/ 50229 dated November 08, 2021	Circular No. NSE/INSP/61572 dated April 12, 2024
23.	**Total available collaterals from all debit balance clients as on last day of the Assessment period**	Total available collaterals (Free & un-encumbered) from debit balance clients (as considered for the above point) as on September 30, 2021.	Total available collateral from debit balance clients ….. as on last day of the assessment period: For aggregating total available collateral of the member for the debit balance clients, the client wise available collateral should be considered as lower of debit and Total value of collateral for that client. Total value of collateral to be considered should be, collateral available in the demat account of the Trading Member which is **Pool Account and Pledged to the Trading Member** i.e., Client Securities Margin Pledge Account, Client Securities Under Margin Funding Account, Client Unpaid Securities Pledgee Account. Further, value of the collaterals to be reported as: - T day for quantity and - T – 1 day for Var & Closing price

116. It is observed that Point no. 23 of NSE Circular dated April 12, 2024 has not included the words *"Free & un-encumbered"* for calculating the collaterals from all debit balance clients, which was specifically mentioned in the NSE Circular dated November 08, 2021. It is also observed that the said Circular dated April 12, 2024 has clarified that the "Total value of collateral to be considered should be, collateral available in the demat account of the Trading Member which is Pool Account and Pledged to the Trading Member". I note that there may be interpretational differences with respect to the NSE Circular No. NSE/ INSP/50229 dated November 08, 2021 though the position has now become clear by NSE Circular dated April 12, 2024. Hence, I find that due to such interpretational difference prior to Circular dated April 12, 2024, benefit may be given to the *Noticee* in this case. In view of the above discussion, I find that the *Noticee* has not violated the provisions of sub-clause (e) of clause 6.1.1 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with NSE Circular No. NSE/INSP/28925 dated February 20, 2015 and NSE Circular No. NSE/ INSP/50229 dated November 08, 2021.

XI Engaging as Principal in business other than that of securities involving personal financial liability

117. It was observed during inspection that the *Noticee* had given unsecured loans and advances to Vayoo Nandan Finance Company Limited (hereinafter referred to as "Vayoo Nandan"), which is a registered client of *Noticee*. It was observed that Vayoo Nandan had last traded through the *Noticee* during the inspection period in CM Segment on May 23, 2022. It was also observed that Vayoo Nandan was not involved in securities / commodities business. The summary of the transactions of the *Noticee* with Vayoo Nandan is provided below.

(a) Opening balance as on April 01, 2021- NIL

(b) Amount paid to Vayoo Nandan during inspection period – INR 127.03 crore

(c) Amount received from Vayoo Nandan during inspection period – INR 126.9 crore.

(d) Closing Balance as on 31st July 2022 – INR 1,05,191.

(e) Interest paid during inspection period - INR 16,16,879.00/-
(f)TDS on interest paid during the inspection period- INR 1,61,688.00/-

118. It has been alleged that the *Noticee* has violated provisions of Clause (f) of Sub-rule (3) of Rule 8 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "SCR Rules, 1957"), which *inter alia* states that a stock broker shall not engage either as principal or employee in any business other than that of securities except as a broker or agent.

119. In this regard, the *Noticee* had submitted before the DA that Vayoo Nandan is a NBFC Company, and the *Noticee* has always been parking its surplus funds with the NBFC to earn interest, so that the interest cost on the funds borrowed for working capital requirements could be reduced. The *Noticee* had further submitted that on a net basis, and as also observed by the inspection team, the *Noticee* had paid interest of INR 16,16,879 to Vayoo Nandan, which indicates that the *Noticee* had borrowed more than what it has actually parked as surplus with Vayoo Nandan. The *Noticee* had also submitted that Vayoo Nandan had not traded through the *Noticee* in the FY 2021-22 and had traded through the *Noticee* on only three days in FY 2022-23. The account of Vayoo Nandan had already been closed on October 14, 2022. In this regard, the *Noticee* had submitted the account closure request form with its reply to the show cause notice issued by the DA. *Noticee* had also relied on the judgement of Hon'ble SAT in the matter of *Magnum Equity Broking Limited vs. National Stock Exchange of India Limited* dated November 29, 2023 (Appeal No 461 of 2022), where it was inter-alia observed that *"10. In our view, investment of surplus funds, generated as a consequence of securities business, with an NBFC registered with RBI cannot lead to an inference that the Appellant is engaged as a principal in business other than that of securities involving personal financial liability. The Respondent Committee given a clear*

finding that the funds were advanced from the account of the Appellant therefore there is no dispute that the funds were their own moneys …. "

120. In this regard, the DA considered the submissions of the *Noticee* and observed that there is no violation as alleged in the SCN.

121. I have examined the allegations and the material available on record. I note that the *Noticee* claims to have parked its surplus funds and also borrowed funds from Vayoo Nandan, which is an NBFC, on several instances. As per the available record, I note that the *Noticee* had this kind of arrangement only with one entity i.e. Vayoo Nandan. These transactions, few in number, cannot lead to an inference that the *Noticee* is engaged either as principal or employee in any business other than that of securities. In view of the observations made by Hon'ble SAT in the matter of *Magnum Equity Broking Limited vs. National Stock Exchange of India Limited* (Supra) and submission of the *Noticee*, I find that the *Noticee* has not violated the provisions of Clause (f) of Sub-rule (3) of Rule 8 of the SCR Rules, 1957

XII Mismatch in ledger balance vis-à-vis daily margin statements sent to the clients

122. During inspection, two instances of ledger balance mismatch in daily margin statements of two clients were observed. The two instances are stated below-

(a) Short reported in daily margin statement– 1 client; Value – INR 5,000.00

(b) Excess reported in daily margin statement – 1 client; Value – INR 4,49,94,811.27

123. Further, nine instances of mismatch in Total Margin in Daily Margin Statements of 9 clients were also observed, wherein the value of excess reported in daily margin statement was INR 9,44,16,936.59. The details of aforesaid instances are provided in the table below-

Table No. 17

Day Date	Client Code	Client Name	As per Exchange working (INR)	As per Daily Margin Statement sent to clients (INR)	Difference (INR)	Remarks
13/07/2021	1R323	RAKESH VIDYADHAR CHAUDHARY	3,95,875.06	3,90,875.06	5,000	Difference in ledger balance
05/05/2021	1A202	ANJU SOMANI	1,04,25,221.71	5,54,20,032.98	-4,49,94,811.3	Difference in ledger balance
07/01/2022	1R229	RITU SURANA	1,72,995	3,04,551	-1,31,556	Difference in Total Margin for all segments
13/07/2021	1R323	RAKESH VIDYADHAR CHAUDHARY	78,100	4,68,600	-3,90,500	Difference in Total Margin for all segments
04/01/2022	1S92	SANJIV CHOUDHARY HUF .	93,636	5,61,816	-4,68,180	Difference in Total Margin for all segments
26/11/2021	1S273	SUMATI PRADHAN	1,41,490.95	1,81,825.58	-40,334.63	Difference in Total Margin for all segments
21/05/2021	1A37	ANKIT NAWALKISHORE AGARWAL HUF	4,48,252.32	9,19,884.14	-4,71,631.82	Difference in Total Margin for all segments
18/10/2021	1I9	INTEX TECHNOLOGIES (INDIA) LIMITED	23,54,207.75	2,90,19,250.24	-2,66,65,042.5	Difference in Total Margin for all segments
27/12/2021	1R21	R.P REALTECH PRIVATE LTD.	17,50,590.74	1,30,43,190.42	-1,12,92,599.7	Difference in Total Margin for all segments
05/04/2021	1S221	SAGAR RAMDAS BOMBLE	3,275	12,223.25	-8,948.25	Difference in Total Margin for all segments
21/10/2021	1Y4	YMS CAPITAL LLP .	0	5,49,48,143.72	-5,49,48,143.7	Difference in Total Margin for all segments
		Total			**-13,94,06,748**	

124. As per the provisions of Clause 2.4 of SEBI Circular No. MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008, brokers should issue a daily statement of collateral utilisation to clients, in the format prescribed in the Annexure A of the NSE Circular NSE/INSP/36786 dated January 19, 2018.

125. With respect to the difference of INR 5,000 in the ledger balance of client 1R323, *Noticee* had submitted that it had mistakenly reported a short value of INR 5,000. The *Noticee* also stated that it had received two cheques of INR 2,00,000 and INR 1,95,000, but it had wrongly posted the amount in the system for both the cheques as INR 2,00,000 each on the T-day itself, i.e. July 13, 2021. Due to this, there was a difference in the daily margin statement on July 13, 2021. However, *Noticee* submitted that the mistake was realised on July 15, 2021 when the cheques were credited to the account and it was immediately rectified at that time. DA, in the Enquiry Report, has observed that the *Noticee* has accepted the error and rectified the same.

126. In view of the above submission made by the *Noticee,* I find that the charge is not disputed and needs no further deliberation.

127. With respect to the difference of about INR 4.50 Crore in the ledger balance of client 1A202 in the daily margin statement dated May 05, 2021, the *Noticee* has submitted that the difference occurred due to inadvertent error in importing incorrect opening balance for the client at the beginning of the FY 2021-22 on April 01, 2021. The correct balance was INR 1,04,25,221.71, but the daily margin statement showed the ledger balance as INR 5,54,20,032.98. In view of the submission of the *Noticee*, I find that the *Noticee* has accepted that the difference in amount was due to inadvertent error on its part. Accordingly, the charge stands established.

128. With respect to nine instances of mismatch in Total Margin in Daily Margin Statements of 9 clients, the *Noticee* submitted that for the computation of total margin, the *Noticee* had considered all types of margin which are collected by it, i.e. VaR + ELM + Additional Margin + Minimum Margin, in accordance with the NSE Circular NSE/INSP/53820 dated September 23, 2022 FAQ No. 5(III) which states that “Apart from 50% cash margin mentioned in point ii above, member may also *retain 225% of EOD margin (which includes additional 125% margin) reduced by 50% cash margin and the value of securities (after applying appropriate haircut) accepted as collateral from the clients by way of ‘margin pledge’ created in the Depository system for the purpose of margin*

and value of commodities (after applying appropriate haircut). The margin liability shall include the end of the day margin requirement in all the segments across exchanges excluding the margin on consolidated crystallized obligation/ MTM. The margin liability may also include the margin collected by the Member from their clients as per the risk management policy and informed to the clients." However, as per the inspection team, only Minimum Margin + Additional Margin + MTM is to be considered for calculating Total Margin.

129. The DA has observed that for calculation of total margin required at the EOD, only Minimum Margin + Additional Margin + MTM is to be considered. However, the *Noticee* has also considered VaR and ELM for calculating the total margin, which is incorrect.

130. I have perused the material available on record and the submissions made by the *Noticee*. I note that as per the regulatory requirement, only Minimum Margin + Additional Margin + MTM is to be considered for calculation of total margin required at the EOD. In my opinion, the *Noticee* has misinterpreted the relevant provisions and I do not find any reason to disagree with the observations of the DA.

131. In view of the above observations, I find that the *Noticee* has violated the provisions of Clause 2.4 of SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008 read with Annexure A of the NSE Circular NSE/INSP/36786 dated January 19, 2018.

XIII. Excess Pay-out made to clients

132. During inspection, it was observed that *Noticee* had made pay-out of funds to clients in excess of their balances. Upon further verification it was found that *Noticee* was doing early pay-out of funds to the clients against early pay-in of securities in 91 instances belonging to 61 clients in which total amount paid was INR 20,19,84,398.32.

133. It has been alleged that the *Noticee* has violated sub-clause (5) of clause A of Schedule II read with sub-regulation (f) of regulation 9 of the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 read with clause (ii) of regulation 6.1.6.2 of National Stock Exchange of India Limited Regulations (F&O Segment) and sub-clause

(ii) of clause (c) of regulation 6.1.5 of Part A of National Stock Exchange (Capital Market) Trading Regulations, 1994,

134. As per the provisions of clause (ii) of regulation 6.1.6.2 of National Stock Exchange of India Limited Regulations (F&O Segment) and sub-clause (ii) of clause (c) of regulation 6.1.5 of Part A of National Stock Exchange (Capital Market) Trading Regulations, 1994, no money shall be paid into clients/constituent's account other than-

- money held or received on account of clients/ constituents,
- such moneys belonging to the Trading Member as may be necessary for the purpose of opening or maintaining the account;
- money for replacement of any sum which may by mistake or accident have been drawn from the account;
- a cheque or draft received by the Trading Member representing in part money belonging to the client/ constituent and in part money due to the Trading Member.

135. I note that the *Noticee*, in the submissions, has stated that the clauses in NSE Regulations do not constrain the earlier payout of funds to the clients after the successful EPI of shares to the clearing corporation and before the settlement of the transaction. I note that this submission has been accepted by the DA, in the Enquiry Report. The DA has further observed that if the client has done early pay-in of securities, the credit of money is due to him, unless there is a finding that the moneys of other clients have been used to provide credit to the early payout client. However, no such adverse finding is present in the inspection report. Further, DA considered this as providing better service by *Noticee* to its clients. Accordingly, DA observed that there is no violation of the above mentioned provisions.

136. I have perused the material available on record and the submission of the *Noticee* made in the extant proceeding. I note that the *Noticee*, in addition to the above submissions, stated that the relevant clause lacks clarity and does not address the earlier payout of funds to the clients, which occurred after the successful EPI of shares to the clearing

corporation but before the settlement of the transaction. Consequently, the *Noticee* contends that there is no violation committed by them.

137. On perusal of the relevant provisions, it is observed that the said provisions specifically mentioned when the money shall be paid into clients/constituent's account. In this case, the *Noticee* has clearly stated that the pay out of funds was done to the clients after the successful EPI of shares to the clearing corporation but before the settlement of the transaction. I agree with the observation of the DA that if the client has done early pay-in of securities, the credit of money is due to him. Further, I note that no harm has been caused to clients and no such allegation has been made in the SCN.

138. In view of the above, I find that the *Noticee* has not violated the provisions of the sub-clause (5) of clause A of Schedule II read with sub-regulation (f) of regulation 9 of the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 read with clause (ii) of regulation 6.1.6.2 of National Stock Exchange of India Limited Regulations (F&O Segment) and sub-clause (ii) of clause (c) of regulation 6.1.5 of Part A of National Stock Exchange (Capital Market) Trading Regulations, 1994.

XIV. Cyber security and cyber resilience

139. During inspection it was observed in the two cyber audit reports (April 01, 2021 to September 2021 and October 2021 to March 2022) that the auditor had raised many observations such as Vulnerability. Assessment and Penetration Tests (VAPT) not conducted; encryption certificate not obtained for applications; in-house developed products not tested regularly; and testing of security patches and updates not performed before deployment. It was also observed that the *Noticee* did not have any Incident Response Plan for pandemic. The list of observations made from the two cyber security and systems audit reports were communicated to the *Noticee*, and some of its responses were accepted. Remaining observations along with the *Noticee*'s responses have been reproduced in the table below.

Cyber Security and Systems Audit Report – April 2021 – September, 2021

Table No. 18

Observation	*Noticee*'s Response
With respect to point 3(w), • *Noticee* has not obtained STQC certificate • *Noticee* has not tested in-house developed products regularly, as the testing certificate provided by the *Noticee* pertains to 2016 and 2017	*Noticee* is in discussion with the vendors regarding the STQC certification.

Cyber Security and Systems Audit Report – October 2021 – March, 2022

Table No. 19

Sr. No.	Observations	*Noticee*'s Response
3	Stock Brokers / Depository Participants should implement measures to prevent unauthorized access or copying or transmission of data / information held in contractual or fiduciary capacity. It should be ensured that confidentiality of information is not compromised during the process of exchanging and transferring information with external parties. Illustrative measures to ensure security during transportation of data over the internet are given in Annexure B of SEBI circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018	Vide company policy dated April 04, 2022, it implemented measures to prevent access or copying or transmission of data / information held in contractual or fiduciary capacity, has been enclosed.
4	Application security for Customer facing applications offered over the Internet such as IBTs (Internet Based Trading applications), portals containing sensitive or private information and Back office	With reference to security for customer facing applications such as IBT - Such type of software is covered by strong encryption by SSL and others. Further,

Sr. No.	Observations	*Noticee*'s Response
	applications (repository of financial and personal information offered by Brokers to Customers) are paramount as they carry significant attack surfaces by virtue of being available publicly over the Internet for mass use. An illustrative list of measures for ensuring security in such applications is provided in Annexure C.	*Noticee* is using secured FTP created by owned or purchase from vendors (Licensed)
5	Stock Brokers / Depository Participants should ensure that off the shelf products being used for core business functionality (such as Back office applications) should bear Indian Common criteria certification of Evaluation Assurance Level 4. The Common criteria certification in India is being provided by (STQC) Standardisation Testing and Quality Certification (Ministry of Electronics and Information Technology). Custom developed / in-house software and components need not obtain the certification, but have to undergo intensive regression testing, configuration testing etc. The scope of tests should include business logic and security controls.	For In house software testing certificates have been attached and for outside vendors, *Noticee* attached the reply received from the vendor regarding STQC Certification.
11	The stock brokers should formulate Standard Operating Procedure and adhere with the SOP for handling and reporting of Cyber Security Incidents. The aspects which shall form part of the SOP and which needs to be complied with by stock Brokers should be as per Exchange circular NSE/INSP/48163 dated May 03, 2021	*Noticee* has prepared a cyber SOP which states that these requirements are complied with. The SOP has been submitted with its response.
19	Organization needs to explore a mechanism for ensuring that the employee using remote access solution is indeed the same person to whom access has been granted and not another employee or unauthorized user.	Policy for remote access has been submitted by the *Noticee*.

Sr. No.	Observations	*Noticee*'s Response
	1. At random intervals takes a picture with the webcam and uploads the same to the Member's server, 2. At random intervals pops up and prompts biometric authentication with a timeout period of a few seconds. If there is a timeout, this is flagged on the Member server as a security event.	
20	A suitable video- recognition method has to be put in place to ensure that only the intended employee uses the device after logging in through remote access. Organization needs to implement short session timeouts for better security.	Policy for remote access has been submitted by the *Noticee*.
21	Does the organization monitors Remote access continuously for any abnormal access and are the appropriate alerts and alarms generated to address this breach before the damage is done. ?	*Noticee* is using its private VPN which is purchased from a vendors for remote access facility to its official and registered vendors. And further attached the company policy.
22	Does the organization have appropriate risk mitigation mechanisms whenever remote access of data centre resources is permitted for service providers?.	When *Noticee* needs the service from Service provider, it provides the access through its machine and there is a dedicated person for monitoring,
23	Does the organization have updated the incident response plan in view of the current pandemic? Does the plan cover following : 1.Increase awareness of information technology support mechanisms for employees who work remotely. 2. Implement cyber security advisories received from SEBI, NSE, CERT-IN and NCIIPC on a regular basis. 3. Further, all the guidelines developed and implemented during pandemic situation shall become SOPs post Covid-	*Noticee* has prepared a cyber SOP which states that these requirements are complied with. The same has been provided.

Sr. No.	Observations	*Noticee*'s Response
	19 situation for future preparedness. 4. Disable use of Macros in Microsoft office	

140. It has been alleged that the *Noticee* has violated SEBI Circular No. SEBI/HO/MIRSD/CIR/P/2018/147 dated December 03, 2018 (refer to page 24 - 25 of the order) read with SEBI Circular No. CIR/MRD/ DMS/34/2013 dated November 6, 2013 (refer to page 17 of the order).

141. I note that SEBI circular SEBI/HO/MIRSD/CIR/P/ 2018/147 dated December 03, 2018 provides the Cyber Security & Cyber Resilience framework for Stock Brokers / Depository Participants. Further, the SEBI circular no. CIR/MRD/ DMS/34/2013 dated November 6, 2013 has been issued with respect to Annual System Audit of Stock Brokers/ Trading Members.

142. With respect to observation in the cyber security and systems audit report for the period April – September, 2021, the *Noticee* had submitted testing certificate for its in-house developed products and software, which are dated December, 2016 and March, 2017. The DA observed that the certificates were not recent and pertained to an older period. Thus, DA observed that the *Noticee* had not tested its in-house developed products and software regularly.

143. On perusal of the material available on record, I note that the *Noticee*, in the present proceeding, submitted that the inspection team overlooked the submission of the *Noticee* and failed to acknowledge the fact that the *Noticee* had taken adequate steps to address the open issues. With respect to the allegation of testing certificate, I note that the *Noticee* claims to have furnished relevant certificates for in-house software testing to SEBI. However, from the available records, it is observed that the *Noticee* has not submitted any document/ evidence refuting the observations of the DA

regarding not dated/old testing certificates. In view of the same, I do not find any merit in the submissions made by the *Noticee.*

144. With respect to Cyber Security and Systems Audit Report – October 2021 – March, 2022, the DA observed the following-

I. Point 3 – measures to prevent unauthorized access, copy or transmission of data – *Noticee* had submitted its policy dated April 04, 2022. DA obsreved that the policy document was formed subsequent to the period of the cyber security and systems audit.

II. Point 4 – Application security for customer facing applications offered over the internet – *Noticee* had submitted that such applications are covered by strong encryptions such as SSL and *Noticee* is using FTP created by own or purchased from vendors. DA observed that no evidence in support of its submissions has been made by the *Noticee*.

III. Point 5 – in-house testing of off the shelf products – *Noticee* had submitted copies of certificates which pertain to older period, i.e. December, 2016 and March, 2017. As per Clause 36 of the aforesaid SEBI circular dated December 03, 2018, the *Noticee*'s in-house software and components should have undergone intensive regression testing, configuration testing etc. to test for business logic and security controls, on regular basis. DA observed that the *Noticee* had not tested its off the shelf products in the required manner.

IV. Point 11, 23 – *Noticee* had submitted cyber security incident management procedure document. DA observed that the document submitted by the *Noticee* was not dated.

V. Point 19, 20 – *Noticee* had submitted remote access controls policy and procedures document. DA observed that the document submitted by the *Noticee* was not dated.

VI. Point 21 – *Noticee* had submitted its policy dated April 04, 2022. DA observed that the policy document was formed subsequent to the period of the cyber security and systems audit.

VII. Point 22 – Risk mitigation mechanisms when remote access is permitted to service providers – *Noticee* had submitted that the access is provided through its machine and there is a dedicated person for monitoring. The DA observed that policy document or logs of remote access provided to outside vendors and details of the persons monitoring the vendors, were not submitted by the *Noticee* in support of its contentions.

145. I have perused the material available on record and the submissions made by the *Noticee* in the present proceeding. I note that the documents submitted by the *Noticee* in furtherance of his argument with respect to Point Nos. 3, 11, 19, 20, 21 and 23 are either not dated/ old or subsequent to the period of the cyber security and systems audit. Further, no adequate evidence/ document has been submitted by the *Noticee* to substantiate its submission with respect to Point Nos. 4, 5 and 22.

146. In view of the above observations, I find that the *Noticee* has violated the provisions of SEBI Circular No. SEBI/HO/MIRSD/CIR/P/ 2018/147 dated December 03, 2018 read with SEBI circular No. CIR/MRD/ DMS/34/2013 dated November 6, 2013.

E. Conclusion

147. In view of my above stated findings, I hold that the *Noticee* has violated the following provisions:

I. Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/ 2016/95 dated September 26, 2016 for misuse of clients' funds.

II. Clause 5.4 of SEBI Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 read with clause 8.1.1 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and sub-clause (e) of clause 12 of Annexure-A to SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 for non-settlement of inactive clients' funds.

III. Clause 2.6 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with sub-clause (d) of clause 2 of SEBI Circular No. CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/64 dated June 22, 2017 for client funding.

IV. Clause 3.2 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with NSE Circular NSE/INSP/33276 dated September 27, 2016. for discrepancy in reporting of enhanced supervision data on weekly basis.

V. clause 4.1.2 and 4.1.5 of SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated, November 19, 2019 read with clause 2 of SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/P/ 2020/146 dated July 31, 2020 for incorrect reporting of peak margin.

VI. Clause 7 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 for discrepancy in reporting of enhanced supervision data on monthly basis.

VII. Clause 2.4 of SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008 read with Annexure A of the NSE Circular NSE/INSP/36786 dated January 19, 2018 for mismatch in ledger balance vis-à-vis daily margin statements sent to the clients.

VIII. SEBI Circular No. SEBI/HO/MIRSD/CIR/P/ 2018/147 dated December 03, 2018 read with SEBI circular No. CIR/MRD/ DMS/34/2013 dated November 6, 2013 for non-compliance of cyber security and cyber resilience guidelines.

148. The below table highlights the violations which have been found to be established/ not established against the *Noticee* in this proceeding and the proceeding before the DA.

Table No. 20

Sr. No.	**Alleged Violations**	**Regulatory Provisions**	**Violation established by DA**	**Violation established in extant proceedings**
1	Misuse of Clients' funds	Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/ 2016/95 dated September 26, 2016.	YES	YES
2	Non-settlement of inactive clients' funds	Clause 5.4 of SEBI Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 read with clause 8.1.1 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and sub-clause (e) of clause 12 of Annexure-A to SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 for non-settlement of inactive clients' funds.	YES	YES
3	Incorrect reporting of peak margin	Clauses 4.1.2 and 4.1.5 of SEBI Circular No. SEBI/HO/MIRSD/ DOP/CIR/P/ 2019/139 dated, November 19, 2019 read with clause 2 of SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/P/ 2020/146 dated July 31, 2020	YES	YES
4	Discrepancies in stock reconciliation	Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008, read with Exchange Circular NSE/INSP/38743 dated August 30, 2018 and NSE/INSP/39393 dated November 13, 2018	NO	NO

Sr. No.	Alleged Violations	Regulatory Provisions	Violation established by DA	Violation established in extant proceedings
5	Client funding	Clause 2.6 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017	YES	YES
6	Disclosure of investor complaints on stock broker website	Clause 3 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021 dated December 02, 2021	NO	NO
7	Discrepancy in net worth data submitted to the Exchange	Sub-clause 5 of clause A of Schedule II read with sub-regulation (f) of regulation 9 of SEBI (Stock Brokers) Regulations, 1992 and Annexure A to NSE Circular NSE/COMP/48895 dated July 10, 2021	NO	NO
8	Discrepancies in reporting of enhanced supervision data on weekly basis	Clause 3.2 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with NSE circular NSE/INSP/33276 dated September 27, 2016, NSE/ INSP/31912 dated March 07, 2016	YES	YES
9	Discrepancies in reporting of enhanced supervision data on monthly basis	Clause 7 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016	YES	YES
10	Discrepancies in risk based supervision data reporting	Sub-clause (e) of clause 6.1.1 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, NSE circular NSE/ INSP/28925 dated February 20, 2015 read with NSE/INSP/ 50229 dated November 08, 2021	YES	NO
11	Engaging as Principal in business other than	Clause (f) of sub-rule (3) of rule 8 of the Securities Contracts (Regulation) Rules, 1957	NO	NO

Sr. No.	Alleged Violations	Regulatory Provisions	Violation established by DA	Violation established in extant proceedings
	that of securities involving personal financial liability			
12	Mismatch in ledger balance vis-à-vis daily margin statements sent to the clients	Clause 2.4 of SEBI Circular No. MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008 read with NSE Circular No. NSE/INSP/36786 dated January 19, 2018	YES	YES
13	Excess Payout made to clients	Sub-clause (5) of clause A of Second Schedule read with sub-regulation (f) of regulation 9 of SEBI (Stock Brokers) Regulations, 1992, regulation 6.1.6.2 of NSE Regulations (F&O segment) and Regulation 6.1.5 (c) of Part A of NSE Capital Market Regulations	NO	NO
14	Cyber security and cyber resilience	SEBI circular SEBI/HO/MIRSD/CIR/P/2018/147 dated December 03, 2018 read with SEBI circular no. CIR/MRD/ DMS/34/2013 dated November 6, 2013	YES	YES

149. I note that according to the DA, the *Noticee* has violated majority of the provisions as alleged in the SCN, as reproduced in Table No. 20 above. However, the DA, while observing that the *Noticee* had been penalised vide Adjudication Order No. Order/BM/DS/2023-24/30022 dated February 15, 2024 passed in another proceeding for same violations, recommended that the matter may not be proceeded with. It is fact that there are violations. It is also true that Enquiry Proceeding and Adjudication Proceeding are separate and independent of each other. Even if penalty is imposed, direction under sub-section (3) of section 12 of the SEBI Act can also be passed.

However, I am of the view that direction has to be in proportion to the gravity of the violation. For technical / procedural violations of minor nature, which did not assume serious nature and got corrected, the fact that penalty has already been imposed in the adjudication proceeding may be taken as mitigating factor. However, even after considering this mitigating factor, it is seen that there are certain violations (misuse of clients' fund, client funding and cyber security) which cannot be considered as technical violations of minor nature.

150. These three violations are grave in nature. Hence, I do not agree with the recommendation of the DA that the matter may not be proceeded with. In my view, regulatory censure in addition to prohibition from on-boarding new clients for a period of six months from the date of this order would meet the ends of justice. This direction is being given after taking into consideration the grave nature of violations as well as repeat offence of misuse of client money. It has been highlighted at paragraph 22 of this order that similar offence of mis-utilization of client money was also noted by NSE earlier in April 2021 which resulted in penalty of INR 20.26 Lakh along with prohibition for on-boarding of clients for a period of six months. It is also noted that though DA had not recommended any action, sub-regulation (1) of regulation 27 of the Intermediaries Regulations allows the competent authority to take any other action not recommended by DA. The SCN had also asked to show cause why any other action other than what is recommended by DA be not taken.

151. I note that in terms of sub-regulation (5) of regulation 27 of the Intermediaries Regulations, after considering the facts and circumstances of the case, material on record and the written submissions made by the entity, it would be endeavoured to pass the order in 120 days from the date of receipt of the submissions or personal hearing, whichever is later. Further, in terms of section 19 of the SEBI Act, 1992, the power to pass such order has been delegated to Whole Time Members of the Board.

152. In the present case, the written submissions on behalf of *Noticee* were filed on July 01, 2024 and the prresent order is being passed within 120 days of receipt of said written submissions.

F. Order

153. I, in exercise of the powers conferred upon me under sub-section 3 of section 12 and section 19 of the SEBI Act, 1992 read with sub-regulation 5 of regulation 27 of the Intermediaries regulations, hereby issue regulatory censure against the *Noticee*.

154. The *Noticee* is also prohibited from on-boarding new clients for a period of six months from the date of this order.

155. A copy of this order shall be forwarded to Evermore Share Broking Private Limited and all the Recognized Stock Exchanges to ensure necessary compliances.

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DATE: OCTOBER 23, 2024 **KAMLESH C. VARSHNEY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA