BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/AN/RG/2025-26/31537

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

In respect of:

Nuvama Wealth and Investment Limited, Stock Broker

(PAN: AABCE9421H / SEBI Registration Number: INZ000005231)

In the matter of Nuvama Wealth and Investment Limited

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter also referred to as '**SEBI**') carried out joint inspection of Nuvama Wealth and Investment Limited (hereinafter also referred to as 'Noticee/ Entity/ Nuvama/ Stock Broker/ SB/ Broker/ Member/ TM/ NWIL'), along with Stock Exchanges (NSE, BSE, MCX and NCDEX) and Depositories (CDSL and NSDL), during December 26, 2023 to January 02, 2024 inter alia for the inspection period from April 01, 2022 to November 30, 2023.

2. Pursuant to the inspection, the findings were communicated to the Noticee by SEBI vide its letter dated March 14, 2024. The entity submitted its reply to the observations vide its letter dated April 03, 2024. Thereafter, post inspection analysis was carried out by SEBI.

3. Based on the findings arising out of its inspection, analysis of replies received and examination in the matter by SEBI, briefly stated, it was inter alia observed by SEBI that Noticee had allegedly violated various provisions as follows:

3.1. Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

3.2. BSE Exchange Notice No:20180214-31 dated February 14, 2018.

3.3. SEBI Circular No. CIR/DNPD/7/2011 dated August 10, 2011, Clause 4.1.2 of SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated, November 19, 2019, Clause 2.1 of SEBI/HO/MIRSD/DOP/CIR/P/2020/146 July 31, 2020, Clause 3 (xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016 and

3.4. Exchange's Circular NSE/CMPT/03167 dated Feb 01, 2002, NSE/INSP/19583 dated Dec 14, 2011, NSE/CMPT/18591 dated Aug 10, 2011, NSE/CD/11189 dated Aug 26, 2008, NSE/CD/18594 dated Aug 10, 2011 ,NSE/INSP/24805 dated October 23, 2013, NSE/INSP/25612 dated January 20, 2014, NSE/INSP/38154 dated June 27, 2018 and NSE/INSP/41017 dated 5.May 16, 2019, NSE/INSP/41498 dated July 03, 2019, NSE/INSP/43069 dated December 31, 2019 and NSE/INSP/43493 dated February 11, 2020, NSE/INSP/44459 dated May 26, 2020, Exchange circular NSE/INSP/43653 dated February 25, 2020, , Exchange circular NSE/INSP/44490 dated May 28, 2020 , Exchange circular NSE/INSP/44511 dated May 30, 2020, and NSE/INSP/45072 dated July 21, 2020, NSE/INSP/45191 dated July 31, 2020, NSE/INSP/45534 dated August 31, 2020, NSE/INSP/45850 dated September 28, 2020, NSE/INSP/46485 dated November 27, 2020 and NSE/INSP/47278 dated February 09, 2021.

3.5. Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

3.6. BSE Exchange Notice No:20180214-31 dated February ,14 2018.

3.7. Clause 4 and 5 of SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017,

3.8. NSE circular NSE/COMP/35125 dated June 15, 2017 & NSE/COMP/35260 dated June 30, 2017, NSE/INSP/43069 dated December 31, 2019, NSE/INSP/43724 dated March 02, 2020, Exchange circular NSE/INSP/45191 dated July 31, 2020 and NSE/COMP/48531 dated June 09, 2021.

3.9. Clause 18 of Annexure 4 of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011 and

3.10. MCX Circular: MCX/INSP/400/2017 dated October 30, 2017 and MCX/MEM/089/2023 dated February 09, 2023.

3.11. Clause 2(a) of Circular No.: SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/083 dated Jun 02, 2023

3.12. Para 44 of cyber security & cyber resilience framework for stock brokers dated December 03, 2018 read with SEBI circular on "Modification in cyber security and cyber resilience framework for stock brokers/ depository participants" dated June 07,2022.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticee, as stated and therefore, in exercise of the powers conferred under Section 19 of SEBI Act, 1992 read with Section 15-I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred as 'SEBI Rules'), the Competent Authority appointed the undersigned as Adjudicating Officer ("AO") vide order dated August 06, 2024 to inquire into and adjudicate under Section 15HB of the SEBI Act, 1992, for the alleged violations of the Noticee. The said proceedings of appointment were communicated to the undersigned vide Communique dated August 08, 2024.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice no. SEBI/HO/EAD/EAD5/P/OW/2024/28676/1 dated September 10, 2024 ("SCN"), was served upon the Noticee under Rule 4 of the

SEBI Rules to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15HB of the SEBI Act, 1992, for the violations alleged to have been committed by the Noticee.

6. The following was inter alia observed and alleged in respect of the Noticee:

"…

4.1. *C. Settlement of client funds- Inactive client Settlement*

4.1.1. *As per cash and cash equivalent submission amount lying in unclaimed unsettled client fund was amounting to Rs. 3,79,96,146/- whereas as per inactive client wise list provided by Member the amount lying in separate Bank is Rs. 3,87,18,998 vis – a -vis the amount lying in designated separate bank account for holding funds of inactive clients (i.e. Axis Bank – account number XXX136) is Rs. 3,78,77,503.i.e. Member has parked aside less amount of RS. 841494.36 as compared to clients wise break up (untraceable clients) list shared by the member.*

4.1.2. *Inactive client Settlement:*

4.1.2.1. Difference in amount set aside for Inactive clients when compared with Cash & Cash Equivalent Submission

4.1.2.2. As per cash and cash equivalent submission amount lying in unclaimed unsettled client fund was amounting to Rs. 3,79,96,146/- whereas as per inactive clientwise list provided by Member the amount lying in separate Bank is Rs. 3,87,18,998 vis – a -vis the amount lying in designated separate bank account for holding funds of inactive clients (i.e. Axis Bank – account number XXX136) is Rs. 3,78,77,503. (Annexure- 5 to IR)

4.1.3. *The Noticee in its reply to the findings of Inspection report interalia submitted the following:*

4.1.3.1. We wish to submit that that client-wise reconciliation gets finalised at the end of the day and the amount which remains unidentified/unclaimed is set aside and parked in the separate designated bank account. Because of the EOD reconciliation process and banking hours cut off timing, for any increase/decrease in the unidentified/unclaimed amounts, the actual fund movement happens on next working day. In the instant case,an additional amount of Rs. 15,60,730.09 was noted as unidentified/unclaimed as on June 30, 2023, which on account of banking hours cut off timing, could not be moved to the designated Bank account on June 30, 2023, itself. The reporting has been done as per the actual balances in the Bank and there is no incorrect reporting.

4.1.3.2. It is further informed that we have already received an advisory in this regard from NSE wide its Action letter NSE/INSP-ENF/CMFOCDS/OFFSITE/23-24/ACT/13116/2023-30215 dated November 20, 2023. Since action has already been initiated in the said matter, we request

SEBI to take considerate view and not take any additional action in this regard. Action letter is provided as Annexure 3C.

4.1.4. *However, SEBI in this regard observed as follows:*

Inactive client Settlement

4.1.4.1. Upon perusal of the reply of the TM vis-à-vis the findings of inspection it was observed TM had park aside less amount of Rs 8,41,494.36/- as compared to client wise break up (untraceable client) list shared by the client which is not in accordance with the Exchange Notice No: 20200210-47 and Notice No. 20211213-49. Also, the reporting of the amount pertaining to untraceable clients was wrongly submitted by the member as Rs 3,79,96,146/- which is not acceptable.

4.1.5. *In view of the above, it is alleged that the Noticee had violated the following provisions:*

Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

BSE Exchange Notice No:20180214-31 dated February ,14 2018.

4.2. D. Reporting and short collection of Margin

FO- 2 clients (75 clients), 2 instances (75 instances)

Amount of Short Collection – Rs. 4,18,556.90/-

Amount of Wrong Reporting (EOD Margin) – Nil

Amount of Wrong Reporting (Peak Margin) – Rs. 4,24,540.39 /-

CDS – 2 Clients (75 clients) 2 Instances (75 instances)

Amount of Short Collection – Nil
Amount of Wrong Reporting (EOD Margin) – Nil
Amount of Wrong Reporting (Peak Margin) – Rs. 1,27,64,763.91/-
(Refer Annexure 7 to IR)

4.2.1. *The Noticee in its reply to the findings of Inspection report interalia submitted the following:*

The current Client Segregation reporting logic in our system involves adding back T-1 day debit bills to the clear ledger balance to determine the peak ledger balance. This practice aligns with the requirement outlined in NSE circular no. INSP48109 dated April 28, 2021, which specifies that the peak ledger balance should be calculated based on the 'Highest net credit balance or Lowest net debit balance' for the day. To achieve this, all debit entries, including T-1 day bills, fund transfer JVs from Non-MTF to MTF segment, and other JVs passed in the client's ledgers after-market hours, are added back to the end-of-day clear balance. However, we have received advice from NSE through Action letter NSE/INSP-ENF/CMFOCDS/OFFSITE/23-24/ACT/13116/2023- 33102 dated March 12, 2024,

which states that T-1 day debit bills should not be considered when calculating the Peak ledger balance.

In light of this advice, we have communicated the new logic to our back-office vendor for implementation. Since an advisory, vide NSE's action letter has already been issued for the matter and the same is being rectified, we humbly request SEBI not to take any additional action in this regard. NSE action letter is provided as Annexure 4 to IR.

4.2.2. *However, SEBI in this regard observed that, upon perusal of the reply of the TM it may be noted that according to NSE Circular NSE/INSP/48109 dated April 28, 2021 only open bills are to be reversed. Since T-1 day debit bills are settled on T-day, TM should not reverse the settled bills for computing Peak Financial Ledger Balance. As per the TM's reply it is observed that it has after the NSE advice dated March 12, 2024 the T-1 day debit bills are not be considered while calculating the peak ledger balance. As a result TM was found to be violating the below mentioned provisions during the inspection period.*

4.2.3. *In view of the above, it is alleged that the Noticee had violated the following provisions:*

SEBI Circular No. CIR/DNPD/7/2011 dated August 10, 2011, Clause 4.1.2 of SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated, November 19, 2019, Clause 2.1 of SEBI/HO/MIRSD/DOP/CIR/P/2020/146 July 31, 2020, Clause 3 (xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016 and

Exchange's Circular NSE/CMPT/03167 dated Feb 01, 2002, NSE/INSP/19583 dated Dec 14, 2011, NSE/CMPT/18591 dated Aug 10, 2011, NSE/CD/11189 dated Aug 26, 2008, BSE/CD/18594 dated Aug 10, 2011 ,NSE/INSP/24805 dated October 23, 2013, NSE/INSP/25612 dated January 20, 2014, NSE/INSP/38154 dated June 27, 2018 and NSE/INSP/41017 dated 5.May 16, 2019, NSE/INSP/41498 dated July 03, 2019, NSE/INSP/43069 dated December 31, 2019 and NSE/INSP/43493 dated February 11, 2020, NSE/INSP/44459 dated May 26, 2020, Exchange circular NSE/INSP/43653 dated February 25, 2020, , Exchange circular NSE/INSP/44490 dated May 28, 2020 , Exchange circular NSE/INSP/44511 dated May 30, 2020, and NSE/INSP/45072 dated July 21, 2020, NSE/INSP/45191 dated July 31, 2020, NSE/INSP/45534 dated August 31, 2020, NSE/INSP/45850 dated September 28, 2020, NSE/INSP/46485 dated November 27, 2020 and NSE/INSP/47278 dated February 09, 2021).

4.3. F. Risk Based Supervision

It was observed that member has reported incorrect details for profit and loss in RBS submission for half yearly ended September 2022. Difference to of Rs. 34,63,82,801.10 between submission as per financial statement and RBS made by member.

4.3.1. *It was observed by BSE that member has reported incorrect details for profit and loss in RBS submission for half yearly ended September 2022*

Particulars	*As per financial statement submitted by Member (Unaudited)*	*As per Member Submission in RBS*	*Difference*
Details of Profit / loss from broking operations before interest and tax across all exchanges as on 30th September 2022 (F-Other Details, Pt. no. 21 of RBS)	*69,73,01,389.4*	*1,04,36,84,190*	*-34,63,82,801.10*

4.3.2. *The Noticee in its reply to the findings of Inspection report interalia submitted the following:*

4.3.2.1. It is submitted that for the RBS data pertaining to the half year ended September 2022, we had inadvertently reported the actual Profit Before Tax (PBT) figure of Rs. 104 Cr instead of the operating profit of Rs. 207 Cr. Since the issue was observed in only one out of the total 51 data sets forming part of the RBS submission and also an actual profitability figure, the same is requested to be treated an inadvertent oversight, instead of a noncompliance.

4.3.2.2. We further wish to inform you that NWIL has already been penalised by MCX for the said observation vide its letter dated January 23, 2024(Annexure 7). Hence, we humbly request SEBI not to take any additional action in this regard.

We have, however, noted the observation and have reported operating profits going forward.

4.3.3. *However, SEBI in this regard observed that, Upon perusal of the reply of the TM vis-à-vis the findings of inspection it was observed that reply of TM may not be accepted as TM has uploaded Incorrect details with respect to Profit and Loss balances before tax to be reported under RBS Submission for the half yearly ended September 2022. Also, the Trading Member has confirmed that due to the inadvertent oversight, the incorrect reporting of data was done under RBS Submission.*

4.3.4. *In view of the above, it is alleged that the Noticee had violated the following provisions:*

Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

BSE Exchange Notice No:20180214-31 dated February ,14 2018.

4.4. L. Margin Trading Funding

Mismatch observed in Margin Obligation as per Daily Margin Statements and as per Exchange Working – 8 clients, 8 instances (total 20 instances) amounts ranging from Rs. 1,85,202 to 5743565. However, for UCC 50057153 TM charged extra margin amount of Rs. 517002.38 from the client.

4.4.1. *Mismatch observed in Margin Obligation as per Daily Margin Statements and as per Exchange Working – 8 clients, 8 instances*

(Refer Annexure 12 to IR)

4.4.2. *The Noticee in its reply to the findings of Inspection report interalia submitted the following:*

Due to a back-office issue, there was an error in capturing the margin requirement in the SMTF segment in the Daily Margin Statement for a few instances. However, adequate collateral was available in the SMTF segment to cover the margin requirement as calculated by the Exchange. This issue has been rectified effective from 26th Feb 2024.

4.4.3. *However, SEBI in this regard observed that, From the perusal of the TM reply, it was observed that TM has accepted the observation as it occurred because of an error in capturing the margin requirement in the SMTF (SEBI approved Margin Trading Funding) segment in the Daily Margin Statement for a few instances and the issue has been rectified from February 26, 2024 i.e. after the inspection period.*

4.4.4. *In view of the above, it is alleged that the Noticee had violated the following provisions:*

Clause 4 and 5 of SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017, NSE circular NSE/COMP/35125 dated June 15, 2017 & NSE/COMP/35260 dated June 30, 2017, NSE/INSP/43069 dated December 31, 2019, NSE/INSP/43724 dated March 02, 2020, Exchange circular NSE/INSP/45191 dated July 31, 2020 and NSE/COMP/48531 dated June 09, 2021.

4.5. M. Verification of Advance Brokerage

It is observed that member has charged brokerage to non -traded clients during the inspection period.

Total 197 clients
Amount of excess Brokerage charged Rs. 23,26,329.

It is observed that member has not refunded the Excess amount of brokerage collected during inspection period

Total 135 clients

Amount of Brokerage not refunded Rs. 21,61,137

4.5.1. *It is observed that member has charged brokerage to non -traded clients during the inspection period. (details attached as Annexure 13 to IR)*

4.5.2. *It is observed that member has not refunded the Excess amount of brokerage collected during inspection period. (details attached as Annexure 13A to IR)*

4.5.3. *The Noticee in its reply to the findings of Inspection report interalia submitted the following:*

4.5.3.1. In the present matter, the clients had availed the pre-paid brokerage scheme of NWIL. The T&C of such schemes were duly communicated to the clients and same was charged after being opted for by the clients.

4.5.3.2. We wish to draw SEBI's attention to NSE circular on Pre-paid brokerage dated March 24, 2014 (NSE/INSP/26252). In line with the circular all the T& C were informed to the clients. Any Brokerage charged on the clients for the trades done by them did not exceed the maximum prescribed brokerage limit. Further the said circular does not mandate refunding of excess/unutilised brokerage amount to the clients.

4.5.4. *However, SEBI in this regard observed that, Upon verification of the member's reply, it is observed that these clients have availed a prepaid brokerage scheme, and the prepaid brokerage amount is non-refundable after the completion of the tenure of the prepaid brokerage plan. In this case, as per Annexure 13, out of a total of 747 clients with Nil turnover during the plan tenure, the prepaid brokerage plan tenure was not completed during the inspection period for 550 clients. For the remaining 197 clients, prepaid brokerage was not refunded even after the plan tenure completion during the inspection period, resulting in brokerage collected in excess of the SEBI-prescribed limit for these 197 clients. Hence, the observation for these 197 clients persists and the total amount excess brokerage charged is Rs. Rs. 23,26,329*

4.5.5. *Upon verification of the member's reply, it is observed that these clients have availed a prepaid brokerage scheme, and the prepaid brokerage amount is non-refundable after the completion of the tenure of the prepaid brokerage plan. In this case, as per Annexure 13A, the member has not refunded the excess prepaid brokerage amount of Rs. 2161137 pertaining to 135 clients even after the plan tenure completion. This results in brokerage collected in excess of the SEBI prescribed limit for these clients. Hence, the observation for these clients persists.*

4.5.6. *In view of the above, it is alleged that the Noticee had violated the following provisions:*

Clause 18 of Annexure 4 of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011 and MCX Circular: MCX/INSP/400/2017 dated October 30, 2017 and MCX/MEM/089/2023 dated February 09,2023.

4.6. <u>N. Transactions in corporate bonds through Request for Quote platform by Stock Brokers (SBs):</u>

In the month of July, 2023 to October, 2023, it was observed that member has not done at least 10% of total secondary trades by value in CBs in the month by placing OTO /OTM quotes on the RFQ platform and Member has to meet the 10% minimum trade value of Rs. 114.40 Cr. whereas only amount of Rs. 5 Cr. was traded on RFQ thus there was a shortfall of Rs. 109.40 crores in all these months combined.

4.6.1. *In the month of July, 2023 to October, 2023, it was observed that member has not done at least 10% of total secondary trades by value in CBs in the month by placing OTO /OTM quotes on the RFQ platform.*

Month	***Shortfall in amount to be traded on RFQ Platform (Amount in Crores)***
July, 2023	*20.65*
August, 2023	*48.12*
September, 2023	*21.64*
October, 2023	*19.00*
Total	***109.40***

(Refer Annexure 14 to IR)

4.6.2. *The Noticee in its reply to the findings of Inspection report interalia submitted that, Nuvama Wealth & Investments Limited (NWIL), the Stock broker, have complied, at an aggregate level, for undertaking at least 10% of total secondary market trades by value in Corporate Bonds on the RFQ platform of stock exchanges for all the trades in proprietary capacity since the effective date till date. The details of the same is mentioned hereunder: Period Turn over amount RFQ Turnover amount RFQ %July- Dec 18,84,46,61,547 2,38,50,40,038 12.66 This is to further bring into your kind notice that NWIL has initiated the implementation of the circular and took time to create functionality through back end and integration of internal systems. Please note that the aggregate percentage turnover from November 2023 executed through RFQ platform is now ~ 40% on a monthly basis. The has been intimated to NSE vide our email dated Dec 18, 2023 and have been advised by the Exchange on the same. Mail received from NSE is provided as Annexure 11. Since an advisory has already been issued for the matter by NSE and the same have been rectified, we humbly request SEBI not to take any additional action in this regard.*

4.6.3. *However, SEBI in this regard observed that, According to Clause 2(a) of Circular No.: SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/083 dated June 02, 2023, 'with effect from July 01, 2023, for all the trades in proprietary capacity, SBs shall undertake at least 10% of their total secondary market trades by value in CBs in that month by placing/seeking quotes through one-to-one (OTO) or one-to-many (OTM) mode on the RFQ platform of stock exchanges'. The compliance w.r.t. the said circular is to be done on monthly basis.*

4.6.4. *In view of the above, it is alleged that the Noticee had violated the following provisions:*

Clause 2(a) of Circular No.: SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/083 dated Jun 02, 2023)

4.7. P. Cyber Security and Cyber Resilience Framework.

2. As per the closure report submitted, open vulnerabilities have not been remedied within 3 months post the submission of VAPT report and it was observed from the submission of TM that till June 2023 – 37, 157 and 33 vulnerabilities respectively under high, medium and low category were not closed.

4.7.1. *Para 44 of cyber security & cyber resilience framework for stock brokers dated December 03, 2018 read with SEBI circular on "Modification in cyber security and cyber resilience framework for stock brokers/ depository participants" dated June 07,2022 states that" Any gaps/vulnerabilities detected shall be remedied on immediate basis and compliance of closure of findings identified during VAPT shall be submitted to Stock Exchanges within 3 months post the submission of final VAPT report".*

4.7.2. *It is observed from the closure report submitted that open vulnerabilities have not been remedied within 3 months post the submission of VAPT report. In view of the same Nuvama Wealth and Investment Limited is not compliant to aforementioned clause.*

Audit	*Open high/critical vulnerability*	*Open medium vulnerability*	*Open low vulnerability*
VAPT	*42*	*64*	*86*
ATR	*42*	*64*	*86*

4.7.3. *Para 17 of cyber security & cyber resilience framework for stock brokers dated December 03, 2018 " Stock Brokers should ensure that records of user access to critical systems should be maintained and stored in a secure location for a time period not less than two years." It is observed from the audit that Nuvama Wealth and Investment Limited have not maintained logs of critical systems for a period of two years.*

4.7.4. *The Noticee in its reply to the findings of Inspection report interalia submitted the following:*

4.7.4.1. All in-scope applications are empanelled vendors with stock exchanges and every version of software which they release is certified and approved by the exchanges, before being released to members.

4.7.4.2. The vendors have furnished a self-certification mentioning that they follow industry best practices. Additionally, each of the versions in use by us are also pre-approved by the exchanges. However, they are not STQC compliant.

4.7.4.3. We have written to vendor on multiple occasions, and they have been responding with the attached self-certification mentioning that the exchanges have also approved their product.

4.7.4.4. They have citied various challenges in dealing with STQC, mainly:-

- *They will have to take approval on every minor and major release, hence, this will breach regulatory deadlines.*
- *High costs for each version approval with STQC.*
- *Long queue for appointment with the STQC agencies.*

4.7.4.5. We (Nuvama) have also made our representation to the exchanges on Aug 12 2020, citing this, however, we have not received a response from them.

4.7.4.6. This being an open point we have provided the justification to exchange. We will keep updating the exchanges regarding the same.
Details are provided as Annexure 13.

4.7.4.7. The numbers provided here had some discrepancy as it was vulnerability based and the number got revised based on assets. The updated numbers are mentioned in the below table.

4.7.4.8. In March'23, we notified exchanges for an extension regarding data submission on ATR as the closure of vulnerabilities had vendor dependencies. Further, we informed the Exchange that the ATR would be submitted by June 2023, and the same was submitted on 30th June 2023. The email communication with the Exchange is enclosed as Annexure-. Hence there

4.7.4.8. Over the time, significant progress has been made towards resolving these issues. Please refer to the updated status, which clearly demonstrates that NWIL has made significant efforts to resolve the open vulnerability and have been able to close the same.

	Critical	High	Medium	Low	Total
Initial Dec 2022 Open	15	400	655	484	**1554**
June 2023 ATR Open	0	37	157	53	**247**
Mar-24	0	1	0	0	**1**

Hence, we humbly request SEBI to consider the same and not treat the above as a non-compliance.

4.7.4.9. We possess logs for critical assets, and the same was demonstrated at the time of inspection. Further, we have also communicated that older logs are being archived. Since the logs pertain to earlier period, its retrieval from the archival required time. We are hereby enclosing the logs sought for the following days: February 15, April 13 and September 2, 2022. This is not a case of non-maintenance of logs but a delay as the same are being maintained and are being submitted. We request you to kindly consider the same and condone the delay in submission. Relevant logs are provided as Annexure 15.

4.7.4.10. As suggested, we have now included the organization's Managing Director to chair the Incident and response Team/Crisis Management Team. We have shared the revised policy for your reference. Since this is a new requirement and since we have included MD as the chair of the committee, we request SEBI to take a considerate view and not take adverse action in the matter.

Updated BCP policy is attached herewith as Annexure 16.

4.7.5. However, SEBI in this regard observed as follows:

4.7.5.1. The reply of the entity is not acceptable. In view of the same the non-compliance of entity w.r.t Clause 36 of Annexure 1 of SEBI circular no. SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018 stands. However, taking into consideration the non-compliance w.r.t STQC certification observed across the industry. However, TM's vendor has

furnished a self-certification confirming to follow industry's best practices. In view of the above, we may take a lenient approach in this regard.

4.7.5.2. W.r.t. the observation of that open vulnerabilities have not been remedied within 3 months post the submission of VAPT report. TM has submitted that closure of vulnerabilities was dependent on its vendor. Therefore TM was not able to submit final ATR by June 30, 2023 i.e. beyond the mandated timeline of December 2022. Hence, there is a delay on the part of TM to submit the required data. Further, it may be noted that member was required to close all the vulnerabilities by December 2022, however it is observed from the submission of TM that till June 2023, 37, 157, 33 vulnerabilities respectively under High, medium and low category were not closed.

4.7.6. In view of the above, it is alleged that the Noticee had violated the following provisions:

Para 44 of cyber security & cyber resilience framework for stock brokers dated December 03, 2018 read with SEBI circular on "Modification in cyber security and cyber resilience framework for stock brokers/ depository participants" dated June 07,2022.

…"

7. Having regard to principles of natural justice, an opportunity of hearing was afforded to the Noticee on November 07, 2024, vide Hearing Notice dated October 28, 2024 and the Noticee was advised to submit the reply to the SCN atleast 2 working days prior to the scheduled date of hearing. Subsequently, vide email dated November 04, 2024, the Noticee sought adjournment of hearing. Having regard to the request made by the Noticee, the hearing was rescheduled to November 12, 2024.

8. Vide letter dated November 11, 2024, the AR on behalf of the Noticee submitted the reply to the SCN. The key submissions made are detailed as under:

"…

IV. PRELIMINARY OBJECTIONS

A. THE NOTICE ISSUED BY SEBI VIOLATES THE PRINCIPLE OF RES JUDICATA

13. The Noticee respectfully submits that the present Notice has been issued basis complete non application of mind and without appreciation of the true and whole facts of the instant case. It is humbly submitted that SEBI has failed to appreciate the regulatory action taken by the stock exchanges namely National Stock Exchange of India Limited ("NSE") and Multi Commodity Exchange of India Ltd ("MCX") collectively referred to as ("Exchanges") and proceeded ahead and levelled allegations demonstrating complete non application of mind.

14. SEBI has adopted a lackadaisical approach in initiating the present proceedings. SEBI has failed to appreciate the submissions made by the Noticee during the inspection and without giving any consideration to the same made such unfounded allegations which merit no consideration.

15. SEBI has clearly failed to appreciate that some of the allegations alleged in the Notice have been already adjudicated by the Exchanges. Therefore, for the Noticee to be subject to face the same kind of litigation again is contrary to considerations of fair play and justice. As such, SEBI's adjudication on identical issues for the cause of action arising from the inspection are not tenable and the principles of res-judicata are fairly applicable to the instant case. The allegations which are being adjudicated again are as follows:

a) Inactive Client Settlement

b) Reporting and Short Collection of Margin

c) Risk Based Supervision

d) Transactions in corporate bonds through Request for Quote platform by Stock Brokers.

16. As such, for the above violations being adjudicated again, the same are contrary to settled principles of law. It may be noted that the principle of res judicata is a fundamental principle in any legal system which precludes the re-litigation of issues or claims that have been already adjudicated before a competent forum.

17. In this regard, it is relevant to consider the observations passed by the Hon'ble Supreme Court recently in Central Bank of India v. Dragendra Singh Jadon[1] where the following was held:

"The principles of res judicata are attracted where the matter in issue in the later proceedings have directly and substantially been in issue in earlier proceedings, between the same parties, in a competent forum having jurisdiction. Res judicata debars the Court from exercising jurisdiction to determine the lis, if it has attained finality between the parties."

18. In this regard, reference is drawn to the order passed by the Hon'ble Supreme Court in the matter of Hope Plantations Limited v. Taluk Land Board, Peermade & Anr[2] wherein the following observations were made:

"26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice." (Emphasis added)

19. Reliance is also placed on the judgment of State of U.P. v. Nawab Hussain[3], wherein the Hon'ble Supreme Court has held that there cannot arise another cause of action on the same facts, in the interests of – (i) judicial decisions attaining finality and conclusiveness, and (ii) protecting an individual from multiplicity of litigation. In this regard, the Hon'ble Supreme Court made the following key observation:

"3. The principle of estoppel per rem judicatam is a rule of evidence. As has been stated in Marginson v. Blackburn Borough Council, it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action." This doctrine

is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality, and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata." (Emphasis added)

20. In light of the above submissions, it is respectfully submitted that the present Notice could not have been issued against the Noticee, given that the Exchanges had addressed the alleged default through its regulatory measures.
21. Without prejudice to the preliminary objections, set out below are detailed submissions /responses to the findings / allegations set out under the Notice.

A. SETTLEMENT OF CLIENT FUNDS- INACTIVE CLIENT SETTLEMENT

22. The Notice alleges that the Noticee had parked aside less amount of INR 84,14,94.36/- as compared to client wise break up (untraceable client) list shared by the client and that the reporting of the amount pertaining to untraceable clients was wrongly submitted by the Noticee as INR 3,79,96,146/-. As such, it was alleged that the Noticee was in violation of Clause 6.1.1.(j) of Annexure of the SEBI September Circular and the BSE February Notice.

23. As submitted hereinabove, as a preliminary contention, SEBI is precluded from initiating any further action in respect of the aforesaid allegation, given that the NSE has already issued an advisory to the Noticee in this regard vide its letter dated November 20, 2023.

As such, the principle of res-judicata is clearly attracted in the present case. A copy of the letter dated November 20, 2023, is enclosed herewith as Annexure B.

24. Having said that, it is respectfully submitted that SEBI has failed to appreciate and take into consideration the actual figures and has made incorrect observations. In the instant case, an additional amount of INR 15,60,730.09/- was noted as unidentified/unclaimed as on June 30, 2023, which on account of banking hours cut off timing could not be moved to the designated bank account on June 30, 2023, itself. However, the same was up-streamed to the Clearing Corporation on the next working day in terms of SEBI Circular on 'Upstreaming of clients funds by Stockbrokers (SBs) / Clearing Members (CMs) to Clearing Corporations (CCs)' dated June 08, 2023, bearing reference no SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/84, which was applicable w.e.f. July 01,
2023. Accordingly, the Noticee respectfully submits that the reporting has been done as per the actual balances in the bank i.e. Rs. 3,87,18,998.25/- on June 30, 2023. The same can be evidenced from the Bank statement enclosed as Annexure C. Hence, there has been no incorrect reporting as alleged.

25. It is further submitted that the amount of INR 3,79,96,146/- alleged as wrongly submitted by the Noticee as on June 30, 20924 for untraceable client is incorrect. The said amount has been reported in the cash and cash equivalent reporting for June 28, 2024. The actual amount reported by the Noticee for untraceable clients as on June 30, 2024, is INR 4,02,79,728.34. The same can be demonstrated through the extract of the cash and cash equivalent reporting for June 30, 2024 as Annexure D.

26. It ought to be appreciated that the Noticee follows an approach wherein which the client wise reconciliation gets finalized at the end of the day and the amount which remains unidentified/unclaimed is set aside and parked in a separate designated bank account. On account of the end of day reconciliation process and post banking hours cut off timing, for any increase/decrease in the unidentified/unclaimed amounts, the actual fund movement happens on the next working day. Therefore, it is respectfully submitted that the aforesaid violation be not construed as an instance of incorrect setting aside of an amount and incorrect reporting. The detail so the reporting is as under: -

Date	Client Bank AC No.	Accelerated Ledger balance reported for untraceable creditors clients in C&CE (in Rs.)	Bank balance reported (in Rs.)	Difference (Unavailability of unclaimed funds) (in Rs.)	Noticee Remarks
30-Jun-2023	913020007330136	4,02,79,728.34	3,87,18,998.25	15,60,730.09	The differential unidentified / unclaimed amount of Rs. 15,60,730.09 as on June 30, 2023, was identified post the banking hours cut off timing and upstreamed to the Clearing Corporation along with the other unidentified/ unclaimed amount on the immediate next working day.

27. From the above table, you may please note that there is no incorrect reporting by the Noticee and the Ledger balance for untraceable clients as well as the Bank balances reported are the actual back-office ledger balances for untraceable clients and the actual bank balance, respectively, as on June 30, 2023 and the it was only on account of the EOD reconciliation process (which is undertaken late at night) and the banking hours restriction, the differential amount was up-streamed to the Clearing Corporation on the next working day.

28. In light of the above, it is respectfully submitted that the aforesaid allegation is not tenable and deserves to be set aside.

B. REPORTING AND SHORT COLLECTION OF MARGIN

29. The Notice alleges that there was a failure by the Noticee in reporting and short collection of margin which is as follows:

FO -2 clients (75 clients), 2 instances (75 instances)

Amount of short collection – INR 4,18,556.90/- Amount of Wrong Reporting (EOD Margin)- Nil
Amount of Wrong Report (Peak Margin)- INR 4,24,540.39/-

CDS Clients- 2 Clients (75 Clients) 2 instances (75 instances)

Amount of short collection – Nil

Amount of Wrong Reporting (EOD Margin)- Nil

Amount of Wrong Reporting (Peak Margin)- INR 1,27,64,763.91/-

30. As such, the Notice alleges the Noticee to have violated the SEBI August Circular, SEBI November Circular, SEBI July Circular, Clause 3(xii) of SEBI September Circular and Exchange Circulars.

31. As submitted hereinabove, as a preliminary contention, SEBI is precluded from initiating any further action in respect of the aforesaid allegation given that the NSE through its action letter dated March 12, 2024, has already imposed a monetary penalty of INR
56,700/- issued an advisory to the Noticee in respect of the aforesaid allegation pertaining
to October 2023 which is subsequent to the dates of August and September 2023 in the present matter. As such, the principle of res-judicata is clearly attracted in the present case. A copy of the letter dated March 12, 2024, is enclosed herewith as Annexure E.

32. It is relevant to note that the primary contention in the matter revolves around adding back the T-1 debit bills to the financial ledger balance of the clients to arrive at the peak ledger balance. In this regard, it ought to be appreciated that there was no regulatory guidance by way of a circular or otherwise, prior to the reporting date in the instant matter, specifically requiring Brokers not to add back T-1 debit bills while arriving at the peak ledger balance. Accordingly, to allege that the Noticee has violated the SEBI August Circular, SEBI November Circular, SEBI July Circular, Clause 3(xii) of September Circular and Exchange Circulars is incorrect and not tenable.

33. SEBI ought to appreciate that pursuant to trading members' seeking clarification in the matter from the Exchanges, NSE vide their circular dated September 20, 2024, bearing reference number NSE/INSP/64053 clarified that for the purpose of calculating the peak ledger balance of reporting date, the debit bill, if any, which is due for settlement on the Reporting date, is not required to be deducted. In view of the same, trading members are permitted to add back the T-1 debit bill to arrive at the peak financial ledger balance.

34. In light of the above, the practice followed by the Noticee to compute the peak ledger balances of the clients is in line with the regulatory stipulations and there is no margin shortfall in the given instances. Hence, it is respectfully submitted that the aforesaid allegation should be set aside.

C. RISK BASED SUPERVISION

35. The Notice alleges that the Noticee reported incorrect details for profit and loss in the risk based supervision ("RBS") submission for half yearly ended September 2022. Accordingly, it is alleged that the Noticee has violated Clause 6.1.1.(j) of Annexure of SEBI September Circular and BSE February Notice.

36. As submitted hereinabove, as a preliminary contention, SEBI is precluded from initiating any further action in respect of the aforesaid allegation given that the MCX vide its letter dated July 06, 2023, has already imposed a monetary penalty. As such, the principle of res-judicata is clearly attracted in the present case. A copy of the letter dated July 06, 2023, is enclosed herewith as Annexure F.

37. Without prejudice to the aforesaid, it is submitted that while the Noticee has reported incorrect data, it ought to be appreciated that the same was an inadvertent error on part of the Noticee and was not genuine. It is submitted that the Noticee had inadvertently reported the actual Profit Before Tax ("PBT") figure of INR 104 crore instead of the operating profit of INR 207 crore. The ld. AO ought to appreciate that the aforesaid issue was observed in only one out of total 51 data sets forming part of the RBS submission.

As such, the said error was fairly miniscule in such large data sets forming part of the RBS submission having no real or adverse impact on the interest of investors.

38. In view of the above, it is respectfully submitted that the aforesaid allegation should be set aside.

D. MARGIN TRADING FUNDING

39. The Notice alleges that there was a mismatch observed in Margin Obligation as per Daily Margin Statements and as per the Exchange working for 8 clients in 8 instances. The Notice observes the amounts to range from INR 1,85,202 to INR 57,43,565. Accordingly, it is alleged that the Noticee has violated Clauses 4 and 5 of SEBI June 2017 Circular and NSE Circular bearing reference number NSE/COMP/35125 dated June 15, 2017 and NSE/COMP/35260 dated June 30, 2017, NSE/INSP/43069 dated December 31, 2019.

40. At the outset, it is respectfully submitted that SEBI has made such unfounded allegations without any application of mind. It is relevant to note that the circulars alleged to have been violated above have no relevance to the facts of the instant case. It ought to be considered that the circulars alleged to have been violated provide for the guidelines on Margin Trading Facility. As such, it is humbly submitted that the Notice fails to clearly delineate the specific regulatory obligation which the Noticee has violated. Hence, it is submitted that SEBI cannot levy such broad charges against the Noticee.

41. In fact, reference may be made to the judgement of the Hon'ble Securities Appellate Tribunal ("SAT") in the matter of Kunvaraji Finstock Private Ltd. V. Securities and Exchange Board of India4, where it was not clear from SEBI's order as to what specific regulatory obligation the appellant had violated, the Hon'ble SAT held that SEBI failed to prove the charge against the appellant, and the SEBI order was therefore set aside

42. In fact, the Hon'ble SAT has disposed proceedings in the past due to vague and ambiguous nature of a show cause notice.5 Reliance may also be placed on the SAT's order dated April 20, 1999 in the case of Dhanalakshmi Bank vs. SEBI, wherein it was held that:

"The show cause notice issued to the Appellant in the case is vague. The notice merely stated violation of certain provisions of the rule/regulations in a general manner without mentioning the particulars on which the charge against the appellant was based. Further, there is nothing in the adjudicating order to show that even at a later stage the Appellant was informed of the specific instances of default. Principles of natural justice demand that before adjudication starts, the authority concerned should give the affected party the basis of the charge against him so that he gets an opportunity to defend himself. A show cause notice should serve the purpose for which it is required. An abstract notice like the one in the instant case will not serve the purpose."

43. Hence, it is respectfully submitted that the Notice does not identify the exact legal obligation that the Noticee has breached or failed to abide by. In light thereof, the allegation deserves to be set aside.

44. Without prejudice to the aforesaid, it is respectfully submitted that the Noticee had at all times adequate collaterals in the daily margin statements to cover the margin requirement calculated by the Exchanges. Further, there is absolutely no shortfall in the amount of margin collected form the clients on the given date. Hence, it is submitted that a holistic view of the facts ought to be considered in the instant case before arriving at any adverse conclusion.

E. VERIFICATION OF ADVANCE BROKERAGE

45. The Notice alleges that in respect of 197 clients, an amount of excess brokerage of INR 23,26,239/- has been charged by the Noticee. It has also been alleged that in respect of 135 clients, the Noticee has not refunded INR 21,61,137 i.e., excess amount of brokerage collected during the investigation period. Accordingly, it is alleged that the Noticee has violated Clause 18 of Annexure 4 of SEBI Circular dated August 22, 2011, and MCX Circular dated October 30, 2017 and MCX Circular dated February 09, 2023.

46. At the outset, it is submitted that the allegation that the Noticee is in violation of the MCX Circular dated February 09, 2023 is not tenable. It is relevant to note that the aforesaid MCX Circular deals with the advertisement code and in no manner deals with the instant case. As such, it is humbly submitted that the Noticee cannot be said to be in violation of the MCX Circular.

47. Further, the Notice clearly fails to delineate the charge in terms of violation of the MCX Circular dated October 30, 2017. It is submitted that in the absence of a specific provision alleged to have been violated, the Noticee is constrained from filing a comprehensive response. It is submitted that this clearly demonstrates the lackadaisical approach of SEBI in issuing the present Notice.

48. It is respectfully submitted that the Noticee at no point of time has charged excess brokerage to their clients. The brokerage charged by the Noticee was in consonance with the framework prescribed by SEBI and the Exchanges.

49. It is humbly submitted that the Noticee runs a subscription program to meet the needs of different segments of clients. This includes various value-added services to the clients such as concession in DPC charges, order charges, providing dedicated risk management facilities, onboarding and training charges and concession in brokerage. The plan benefits, charges and other plan related details are communicated to clients before booking the subscription plan and explicit consent is obtained from the respective clients. In the present matter, the amount so collected is towards this subscription program which offers clients access to a wide range of tailer made services. Further, as stated above, since the subscription fees is not purely a brokerage plan but is towards various value- added services that are offered to the clients, upon receipt of their explicit consent, it should not be termed as pre-paid brokerage linking it only to the trades and its refund to the client is not warranted. Hence, it is respectfully submitted that the Noticee has not committed any non-compliance in this regard and the aforesaid allegation should be set aside.

50. In view of the above, it is respectfully submitted that the aforesaid allegation should be set aside.

F. TRANSACTIONS IN CORPORATE BONDS THROUGH REQUEST FOR QUOTE PLATFORM BY STOCK BROKERS

51. The Notice alleges that the Noticee had not done at least 10% of its secondary trades by value in corporate bonds in the month of July 2023 to October 2023 by placing one-to- one ("OTO") and one-to-many ("OTM") quotes on the request for quote platform. It has been alleged that the trading member was required to meet the 10% minimum trade value of INR 114.40 crore whereas there has been a shortfall INR 109.40 crores in all these months combined. Accordingly, it is alleged that the Noticee has violated Clause 2(a) of SEBI Circular dated June 02, 2023.

52. As submitted hereinabove, as a preliminary contention, SEBI is precluded from initiating any further action in respect of the aforesaid allegation given that the NSE through its email dated February 01, 2024, has already issued an advisory to the Noticee. As such, the principle of res judicata is clearly attracted in the present case. Therefore, it is submitted that the aforesaid charge deserves to be set aside in entirety. A copy of the email dated February 01, 2024, is enclosed herewith as Annexure G.

53. Without prejudice to the aforesaid, it is relevant to note that this was a new mandate and required development and system integration at Noticee's end. However, it is submitted that the aggregate percentage turnover from November 2023 executed through the request for quote platform is now in line with the requirement and meeting prescribed threshold.

54. In view of the above, it is respectfully submitted that the aforesaid allegation should be set aside.

G. CYBER SECURITY AND CYBER RESILIENCE FRAMEWORK

55. The Notice alleges that the Noticee has failed to close the vulnerabilities respectively under high, medium and low category within a period of three months pursuant to submission of the vulnerability and penetration test ("VAPT") report. Accordingly, it is alleged that the Noticee has violated paragraph 48 of the SEBI December Circular read with the SEBI June 2022 Circular.

56. At the outset, it is submitted that the surrounding context outlined below are of significant importance and are required to be considered in order to demonstrate the bona-fide conduct of the Noticee.

57. It is respectfully submitted that the delay in closing the vulnerabilities is not on account of the Noticee but factors which were beyond their control. It is relevant to note that all in-scope applications are empanelled vendors with stock exchanges and every version of software which they release is certified and approved by the exchanges, before being released to vendors.

58. It is relevant to note that in March 2023, the Noticee vide its email had requested all Exchanges for an extension of deadline for the submission of action taken report ("ATR") as the closure of vulnerabilities had vendor dependencies. The Noticee had subsequently notified all Exchanges that the ATR would be submitted by June 2023, and accordingly the report was duly submitted on June 30, 2023. Further Noticee was also in receipt of a reply from NCDEX dated April 03, 2023, stating that they have taken note of the request and asked the Noticee to submit the closure report at the earliest. A copy of the emails dated March 31, 2024, and April 03, 2023, is enclosed herewith as Annexure H.

59. The ATR report submitted in June 2023 identified 247 open findings out of a total of 1,554. Justifications were provided for each open item in the ATR report. The open findings listed in the ATR report were w.r.t vulnerabilities which were mitigated by the isolated operation of our trading infrastructure, along with comprehensive preventive security controls.

60. It is pertinent to note that the Noticee has made concerted efforts to address these issues over time, successfully closing all findings. The last VAPT assessment for the period October 2023 to March 2024 was concluded, with all findings promptly addressed/closed and ATR submissions completed on time (On September 30, 2024).

61. In view of the above, we respectfully request SEBI to consider the efforts and actions taken by the Noticee and not treat the above as a non-compliance. Given the measures in place and the progress made by the Noticee, it is submitted that no fault ought to be attributed to the conduct of the Noticee and the charge deserves to be set aside without any adversarial action.

H. FACTS OF THE CASE DO NOT WARRANT IMPOSITION OF MONETARY PENALTY

62. Without prejudice, it is submitted that the alleged violations, if any, are technical, procedural and venial breaches with little to no adverse impact and thus lacks pervasiveness. In no manner can these alleged violations be seen to represent any systemic issue with the Noticee's operations. There is no account of any loss having been caused to the investors due to actions of the Noticee and not a single investor complaint against the Noticee with respect to contents of the Notice has been recorded. Additionally, none of the alleged violations were premediated by the Noticee or were on account of any wilful default.

63. Further, it is a trite law that a penalty need not be imposed in every case if a default were to be established, and the enforcement authority is required to assess the relevant circumstances in order to determine whether the imposition of penalty is justified in a particular case. It is also well settled that where there is only a technical or venial default, no penalty at all ought to be imposed. In this regard, reference is drawn to an order dated January 07, 2021, passed by this Hon'ble SAT in the matter of State Bank of India vs SEBI,[6] where the Hon'ble SAT has observed that technical violations need not always result in a monetary penalty by stating the following:

"Therefore, though admittedly there is a violation but in the fact of excruciating factors in delaying full compliance and therefore leading to a technical violation need not always result in a penalty. The judgment of the Hon'ble Supreme Court in the matter of Bhavesh Pabari (supra) is quite relevant that factors under 15J of the SEBI Act is not exhaustive and the adjudicating authorities can look beyond, wherever genuine reasons/ factors exist."

64. It is also relevant to note the findings of the Hon'ble SAT in the matter of Religare Securities Ltd vs SEBI[7] wherein the following was observed:

"It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant ....."

65. Additionally reference is also drawn to the observations of Hon'ble SAT in in the matter of DSE Financial Services Ltd vs SEBI[8] where the following has been observed:

"3. We have observed that it must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We have also observed that every minor discrepancy/irregularity found during inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant. As per the observations made by the adjudicating officer himself, the violations committed by the appellant are mostly technical in nature; some of them are solitary instances and for others the appellant has mostly taken/initiated corrective measures. In view of this, we are of the view that the adjudicating officer was not justified in taking punitive action."

66. Further, it may be noted that in SEBI order in the matter of inspection of Indiabulls Mutual Fund,[9] the Adjudicating Officer observed the following:

"Though there has been a procedural lapse on port of Indiabulls of not taking approval of trustee and not publishing addendum for declaring the dividend on 4 instances, I do not find from the inspection report that it is a repetitive irregularity on part of the noticees. Further the observations made in inspection report are procedural in nature and corrective measures are taken by Noticees on being pointed out by the inspection team. No observations are made in inspection report as to whether investors' interests have adversely affected on account of procedural lapse on the part of Noticees."

67. Therefore, it is reiterated that the alleged technical lapses were not deliberate, intentional or in contumacious disregard of provisions of law. The Noticee submits that as a responsible and compliance conscious registered market intermediary, it has taken continuous effort to ensure that all the relevant rules, regulations and the guidelines issued by SEBI and the exchanges are properly complied and is undertaking constant efforts to ensure that stray incidents as stated in the Notice do not occur again. Therefore, it is humbly submitted that even if the allegations levelled in the Notice are made out, they can be dealt with by way of administrative/cautionary advice and do not require imposition of any penalty under the SEBI Act. It is humbly submitted that imposition of penalty would cause irreparable prejudice to the Noticee's reputation which not only affects the Noticee but also the clients who are availing the Noticee's services.

68. Without prejudice to any of the foregoing provisions, reference may also be made to the decision of the Hon'ble Supreme Court in the matter of Siddharth Chaturvedi v. SEBI,[10] wherein, while determining penalty under Section 15A of the SEBI Act, the Apex Court made the following observations:

"We also find it a little difficult to accept what is stated in paragraph 5 of the judgment. It is very difficult, keeping in view, particularly, two important legal facets – one the doctrine of harmonious construction of a statute; and two, the fact that we are construing a penalty provision of a statute which is to be strictly construed, Section 15A, post amendment in 2002, is suddenly given a pride of place, and Section 15J is made to yield entirely to it. The familiar expression "notwithstanding anything contained" does not appear in the amended Section 15A. This being the case, it is a little difficult to appreciate as to how one can construe Section 15A, as amended, in isolation, without regard to Section 15J. In fact, the facts of the present case would go to show that where there is allegedly only a technical default, and the three parameters of Section 15J would allegedly be satisfied by the appellants, namely, that no disproportionate or unfair advantage has been made as a result of the default; no loss has been caused to an investor or group of investors as a result of the default; and there is in fact, no repetitive nature of default, no penalty at all ought to be imposed. What has been done by the appellants here is to fail to adhere to Regulation 13, as alleged in the show cause notice, which failure has occurred on three days and consequently, has allegedly not been repeated by the appellants anytime thereafter. …" (emphasis supplied)

69. In the case of Cabot International Capital Corporation v. Adjudicating Officer, SEBI[11], the Hon'ble SAT considered the scope of Sections 15I and 15J of the SEBI Act in the context of unintentional failure on the part of the appellant therein to comply with a regulatory requirement and held:

"On a perusal of section 15-1 it could be seen that imposition of penalty is linked to the subjective satisfaction discretion of the adjudicating officer. The words in the section that "he may impose such penalty" is of considerable significance, especially in view of the guidelines provided by the Legislature in section 15J. "The adjudicating officer shall have due regard to the factors" stated in the section is a direction and not an option. It is not incumbent on the part of the adjudicating officer, even if it is established that the person has failed to comply with the provisions of any of the sections specified in subsection (1) of section 15-1, to impose penalty. It is left to the discretion of the adjudicating officer, depending on the facts and circumstances of each case." (emphasis supplied)

70. In Adjudicating Officer, SEBI v. Bhavesh Pabari,[12] the Hon'ble Supreme Court held that the factors laid down in Section 15J of the SEBI Act are illustrative in nature. Factors other than those can also be considered in mitigating the quantum of penalty sought to be imposed.

71. Further, in Piramal Enterprises Limited v. SEBI,[13] the Hon'ble SAT held as follows:

24. "…SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. In the absence of any direct or clinching evidence of insider trading or misuse of UPSI, a reasonable benefit of doubt should be extended to the PEL instead of mechanically imposing a penalty…" (emphasis supplied)

72. The Hon'ble SAT in the matter of DSE Financial Services Ltd vs SEBI[14] while dealing with the allegations of certain deficiencies with regard to manipulation of records maintained by Stock-Broker, observed as under:

"As per the observations made by the adjudicating officer himself, the violations committed by the appellant are mostly technical in nature, some of them are solitary instances and for others the appellant has mostly taken/initiated corrective measures. In view of this, we are of the view that the adjudicating officer was not justified in taking punitive action." (emphasis supplied)

73. In the above background, it is relevant to note the observations of Hon'ble SAT in the matter of Samrat Holdings Limited vs SEBI[15] as under:

"As already stated above, in terms of section 15I whether penalty should be imposed for failure to perform the statutory obligation is a matter of discretion left to the Adjudicating Officer and that discretion has to be exercised judicially and on a consideration of all the relevant facts and circumstances. Further in case it is felt that penalty is warranted the quantum has to be decided taking into consideration the factors stated in section 15J.

It is not that the penalty is attracted per se the violation. The Adjudicating Officer has to satisfy that the violation deserved punishment."

74. Therefore, in view of the aforesaid and the judicial precedents cited hereinabove, it is humbly submitted that this is not a fit case for imposition of monetary penalty and as such, the Notice ought to be disposed of without any adverse findings or directions against the Noticee.

…"

9. On the rescheduled date of hearing viz., November 12, 2024, the Noticee appeared for hearing through its Authorized Representatives (ARs) viz., Ms. Shruti Rajan (Advocate, Trilegal), Mr. Vivek Shah (Advocate, Trilegal), Ms. Rebecca Cardoso (Advocate, Trilegal), Shri Srijith Menon wherein the ARs relied upon and reiterated the submissions made vide its letter dated November 10, 2024. Further, the ARs sought time till November 19, 2024 to make additional submissions as final and complete submissions in the matter, accordingly the same was allowed.

10. Vide email dated November 19, 2024, the Noticee sought time till November 22, 2024, to make additional submissions.

11. Vide letter dated November 22, 2024, the Noticee made following additional submissions as reply to the SCN:

"…

(a) Evidence which demonstrates that unclaimed / unsettled client fund was up-streamed by Noticee

5. At the outset, the Noticee reiterates that the SEBI is precluded from initiating any further action in respect of the aforesaid allegation given that NSE has already issued an advisory to the Noticee in this regard vide its letter dated November 20, 2023. Therefore, the principle of res- judicata is clearly applicable to the present case.

6. Without prejudice to our submission that SEBI has failed to appreciate and take into consideration the actual figures and has made incorrect observations as set out in detail in paragraphs 24 to 27 of our Reply, we humbly submit that that the differential amount pertained to the amount established as unidentified beyond banking hours on June 30, 2023 and was, in a consolidated manner, up-streamed to the clearing member/clearing corporation ("CM/CC") on the next working day i.e., July 03, 2023, in terms of SEBI Circular dated June 08, 2023, bearing reference no SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/84.

7. In order to demonstrate this, the Noticee wishes to highlight that on July 03, 2024, the entire credit balance of the clients in its books, (including the amounts pertaining to the unidentified clients) was up-streamed to the CM/CC by the Noticee. The same is elaborated in the below table:

Particulars	**Amount (in INR)**	**Supporting evidence enclosed**
Total credit balance of the clients in Noticee's books as on July 03, 2023 **(A)** • Identified clients – INR 12,05,68,38,585.37/- • Unidentified Clients – INR 1,79,11,735.44/-	12,07,47,50,320.81/-	Extract of Cash & Cash Equivalent report as on July 03, 2023, submitted to Exchange, enclosed herewith as Annexure A.
Client Assets up-streamed to/available with CM/CCs as on July 3, 2023 **(B)** • With Clearing Member ("**CM**") – INR 17,52,70,65,504.44 • With Clearing Corporation ("CC") – INR 1,31,50,00,000.00	18,84,20,65,504.44/-	The summary along with statement of accounts received from the CM and the collateral files received from CCs, enclosed herewith as **Annexure B (Colly)**.
Excess collateral with CM/CC (B-A)	6,76,73,15,183.63/-	A summary of the working of the excess collateral is enclosed as Annexure C.

From the above it can be noted that the funds lying with the CM/CC as on July 03, 2023, are in excess of the credit balances of the clients, indicating that that entire client funds (including the amount belonging to unidentified clients) have been up-streamed to the CM/CC and are available with them as on July 03, 2023.

8.Accordingly, it is submitted that the allegation that the Noticee has violated of Clause 6.1.1.(j) of Annexure of the SEBI Circular bearing reference number SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, and the BSE Exchange Notice No: 20180214-31 dated February 14, 2018, is untenable and incorrect.

(b) Case-law in furtherance of Noticee's submission on application of principles of res judicata

9.As indicated during the hearing, it is relevant to note that regulatory action has already been taken by stock exchanges namely National Stock Exchange of India Limited ("NSE") and Multi Commodity Exchange of India Ltd ("MCX") and has levelled allegations on the same issues vide issuance of the present Notice. These allegations, which are being adjudicated by SEBI again, are as follows:

i. Inactive client settlement
ii. Reporting and short collection of margin
iii. Risk based supervision
iv. Transactions in corporate bonds through Request for Quote platform by stock brokers

10. As such, the principles of res-judicata are squarely applicable to the instant case. Reference is drawn to the judgment of the Hon'ble Securities Appellate Tribunal ("SAT") in the matter of Asit C. Mehta Investment Intermediaries Ltd. vs SEBI (SAT Appeal No. 272 of 2023 dated April 11, 2023), where it was recognized that SEBI is precluded from imposing a penalty on a violation which has already been adjudicated upon by the stock exchanges. In this regard, the following was held by SAT:

"7. At the outset, we find that for the same violation during the same inspection period, namely, misuse of clients' funds BSE and NSE had imposed a penalty. For the same violation, the two Exchanges have already imposed a penalty and, therefore, it was not appropriate for the AO to impose a penalty again on an issue which had already been adjudicated by the Stock Exchanges. The AO while passing the impugned order has not considered the penalty imposed by the BSE and NSE for the same violation. In our opinion, the imposition of penalty by the AO in nothing but an act of penalizing the appellant more than once for the same violation. Consequently, the imposition of penalty of Rs. 6 lakhs under Section 23D of the SCRA for misuse of clients' funds cannot be sustained."

A copy of the judgment is enclosed herewith as Annexure D to this Additional Reply.

…"

D. CONSIDERATION OF ISSUES AND FINDINGS

12. The issues that arise for consideration in the instant case are:

Issue No. I: Whether the Noticee has violated the provisions of SEBI and Exchange Circulars, as alleged?

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act, 1992?

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

13. I now proceed to deal with the matter having regard to the submissions of the Noticee on merits:

Issue No. I: Whether the Noticee has violated the provisions of SEBI and Exchange Circulars, as alleged?

14. The violations alleged by SEBI in respect of the Noticee are being dealt with sequentially as under:

14.1. Finding A: Inactive client settlement:

14.1.1. In this regard, the following was inter alia observed and alleged:

> As per cash and cash equivalent submission amount lying in unclaimed unsettled client fund was amounting to Rs. 3,79,96,146/- whereas as per inactive client wise list provided by Member the amount lying in separate Bank was Rs. 3,87,18,998 vis – a -vis the amount lying in designated separate bank account for holding funds of inactive clients (i.e. Axis Bank – account number XXX136) was Rs. 3,78,77,503 .i.e. Member has parked aside less amount of Rs. 841494.36 as compared to clients wise break up (untraceable clients) list shared by the member.
>
> Accordingly, it was alleged that the Noticee had violated provisions of Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; BSE Exchange Notice No:20180214-31 dated February 14, 2018.

14.1.2. In this regard, I note that Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 reads

as under:

"…

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

6.1. As per existing norms, Stock Exchanges/Depositories are required to monitor their members/depository participants. It has been decided that the Stock Exchanges and Depositories shall frame various event based monitoring criteria based on market dynamics and market intelligence. An illustrative list of such monitoring criterias are given below:

6.1.1.Monitoring criteria for Stock Brokers

…

j. In case stock broker shares incomplete/wrong data or fails to submit data on time.

…"

14.1.3. In this regard, the Noticee has inter alia submitted the following:

"…In the instant case, an additional amount of INR 15,60,730.09/- was noted as unidentified/unclaimed as on June 30, 2023, which on account of banking hours cut off timing could not be moved to the designated bank account on June 30, 2023, itself. However, the same was up-streamed to the Clearing Corporation on the next working day in terms of SEBI Circular on 'Upstreaming of clients funds by Stockbrokers (SBs) / Clearing Members (CMs) to Clearing Corporations (CCs)' dated June 08, 2023, bearing reference no SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/84, which was applicable w.e.f. July 01, 2023. Accordingly, the Noticee respectfully submits that the reporting has been done as per the actual balances in the bank i.e. Rs. 3,87,18,998.25/- on June 30, 2023. The same can be evidenced from the Bank statement enclosed as Annexure C. Hence, there has been no incorrect reporting as alleged…" and *"…amount of INR 3,79,96,146/- alleged as wrongly submitted by the Noticee as on June 30, 20924* (read 2024) *for untraceable client is incorrect. The said amount has been reported in the cash and cash equivalent reporting for June 28, 2024. The actual amount reported by the Noticee for untraceable clients as on June 30, 2024, is INR 4,02,79,728.34. The same can be demonstrated through the extract of the cash and cash equivalent reporting for June 30, 2024 as Annexure D*…"

14.1.4. Further in this regard, the Noticee has inter alia submitted that, "…*NSE has already issued an advisory to the Noticee in this regard vide its letter dated November 20, 2023*…"

14.1.5. In this regard, on perusal of the NSE letter dated November 20, 2023, as submitted the Noticee, I note that the Noticee was issued an advisory with respect to incorrect data submissions for weekly client level Cash and Cash Equivalent and bank account balances for June 30, 2023. Therefore, I am inclined to allow the benefit of doubt to the Noticee in this regard.

14.2. Finding B: Reporting and short collection of Margin:

14.2.1. In this regard, the following was inter alia observed and alleged:

FO- 2 clients (75 clients), 2 instances (75 instances)
Amount of Short Collection – Rs. 4,18,556.90/-
Amount of Wrong Reporting (EOD Margin) – Nil
Amount of Wrong Reporting (Peak Margin) – Rs. 4,24,540.39 /-

CDS – 2 Clients (75 clients) 2 Instances (75 instances)
Amount of Short Collection – Nil
Amount of Wrong Reporting (EOD Margin) – Nil
Amount of Wrong Reporting (Peak Margin) – Rs. 1,27,64,763.91/-

Accordingly, it was alleged that the Noticee had violated provisions of SEBI Circular No. CIR/DNPD/7/2011 dated August 10, 2011 , Clause 4.1.2 of SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated, November 19, 2019, Clause 2.1 of SEBI/HO/MIRSD/DOP/CIR/P/2020/146 July 31, 2020, Clause 3 (xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016; Exchange's Circular NSE/CMPT/03167 dated Feb 01, 2002, NSE/INSP/19583 dated Dec 14, 2011, NSE/CMPT/18591 dated Aug 10, 2011, NSE/CD/11189 dated Aug 26, 2008, NSE/CD/18594 dated Aug 10,

2011 ,NSE/INSP/24805 dated October 23, 2013, NSE/INSP/25612 dated January 20, 2014, NSE/INSP/38154 dated June 27, 2018 and NSE/INSP/41017 dated 5.May 16, 2019, NSE/INSP/41498 dated July 03, 2019, NSE/INSP/43069 dated December 31, 2019 and NSE/INSP/43493 dated February 11, 2020, NSE/INSP/44459 dated May 26, 2020, Exchange circular NSE/INSP/43653 dated February 25, 2020, , Exchange circular NSE/INSP/44490 dated May 28, 2020 , Exchange circular NSE/INSP/44511 dated May 30, 2020, and NSE/INSP/45072 dated July 21, 2020, NSE/INSP/45191 dated July 31, 2020, NSE/INSP/45534 dated August 31, 2020, NSE/INSP/45850 dated September 28, 2020, NSE/INSP/46485 dated November 27, 2020 and NSE/INSP/47278 dated February 09, 2021).

14.2.2. In this regard, I note from the material available on record the following instances in FO and CDS segment:

Sr. no.	Segment	Margin Date	Client Code	Client name	Short Collection (in Rs.)	Wrong Reporting (in Rs.)
1	FO	17/08/2023	801xxx24	NxxxU GxxL	-	5,983.49
2	FO	17/08/2023	801xxx13	DxxxxL ExxxxECH PRxxxxTx LxxITxx	4,18,556.90	4,18,556.90
3	CD	14/09/2023	501xxx61	AxxxI ExxATx xLx	-	1,27,26,244.89
4	CD	27/09/2022	500xxx08	JOxxY AxxI ExxM xxIVxxE xIxxTxx	-	38,519.02

14.2.3. In this regard, I note that the Noticee has submitted, "…*primary contention in the matter revolves around adding back the T-1 debit bills to the financial ledger balance of the clients to arrive at the peak ledger balance. In this regard, it ought to be appreciated that there was no regulatory guidance by way of a circular or otherwise, prior to the reporting date in the instant matter, specifically requiring Brokers not to add back T-1 debit bills while arriving at the peak ledger balance. Accordingly, to allege that the Noticee has violated the SEBI August Circular, SEBI November Circular, SEBI July Circular, Clause 3(xii) of September Circular and Exchange Circulars is incorrect and not tenable…pursuant to trading members' seeking clarification in the matter from the Exchanges, NSE vide their circular dated September 20, 2024, bearing reference number NSE/INSP/64053 clarified that for the purpose of calculating the peak ledger balance of reporting date, the debit bill, if any, which is due for settlement on the Reporting date, is not*

required to be deducted…"

In this regard, I note that similar contention was provided by the Noticee to SEBI in its response to the findings of inspection.

14.2.4. In this regard, I note that alleged violation pertains to year 2022 and 2023, however as submitted by the Noticee that NSE vide their circular dated September 20, 2024, bearing reference number NSE/INSP/64053 clarified that for the purpose of calculating the peak ledger balance of reporting date, the debit bill, if any, which is due for settlement on the Reporting date, is not required to be deducted. In this regard, NSE also confirmed that the instances referred to pertains to period prior to issuance of clarification (i.e. Sep 20, 2024). Therefore, having regard to the contentions of the Noticee and to the material available on record, I am inclined to allow the benefit of doubt to the Noticee in this regard.

14.3. Finding C: Risk Based Supervision (RBS):

14.3.1. In this regard, the following was inter alia observed and alleged:

It was observed that member had reported incorrect details for profit and loss in RBS submission for half yearly ended September 2022. Difference of Rs. 34,63,82,801.10 between submission as per financial statement and RBS made by member.

Particulars	As per financial statement submitted by Member (Unaudited)	As per Member Submission in RBS	Difference
Details of Profit / loss from broking operations before interest and tax across all exchanges as on 30th September 2022 (F-Other Details, Pt. no. 21 of RBS)	69,73,01,389.4	1,04,36,84,190	-34,63,82,801.10

Accordingly, it was alleged that the Noticee had violated provisions of Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; BSE

Exchange Notice No:20180214-31 dated February 14, 2018.

14.3.2. In this regard, I note that Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 reads as under:

"…

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

6.1. As per existing norms, Stock Exchanges/Depositories are required to monitor their members/depository participants. It has been decided that the Stock Exchanges and Depositories shall frame various event based monitoring criteria based on market dynamics and market intelligence. An illustrative list of such monitoring criterias are given below:

6.1.1.Monitoring criteria for Stock Brokers

…

j. In case stock broker shares incomplete/wrong data or fails to submit data on time.

…"

14.3.3. In this regard, the Noticee has interalia submitted that, "…*SEBI is precluded from initiating any further action in respect of the aforesaid allegation given that the MCX vide its letter dated July 06, 2023, has already imposed a monetary penalty. As such, the principle of res-judicata is clearly attracted in the present case. A copy of the letter dated July 06, 2023, is enclosed herewith as Annexure F…"*

In this regard, on perusal of MCX letter dated July 06, 2023 as submitted by the Noitcee as part of its reply to the SCN, I note that the said letter pertains to internal audit report for the half year period ended 01-October-2022 to 31-March-2023. However, the instant alleged violation is with respect to half year ended September 2022. In view thereof, I note that the Noticee's submissions are devoid of merit and hence not acceptable.

14.3.4. I further note that the Noticee's submissions are in nature of admission in so far as the Noticee has inter alia submitted that, "…*while the Noticee has reported incorrect data, it ought to be appreciated that the same was an inadvertent error on part of the Noticee*…"

14.3.5. I also note from the material available on record that the Noticee's submissions to SEBI in response to the findings of inspection earlier were in nature of admission in so far as the Noticee had inter alia submitted that, "…*It is submitted that for the RBS data pertaining to the half year ended September 2022, we had inadvertently reported the actual Profit Before Tax (PBT) figure of Rs. 104 Cr instead of the operating profit…"*

14.3.6. In view thereof, I find that the allegation that member had reported incorrect details for profit and loss in RBS submission for half yearly ended September 2022 and that there was difference of Rs. 34,63,82,801.10 between submission as per financial statement and RBS made by member, stands established. Therefore, I hold that the Noticee had violated the provisions of Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; BSE Exchange Notice No:20180214-31 dated February 14, 2018.

14.4. Finding D: Margin trading funding:

14.4.1. In this regard, the following was inter alia observed and alleged:

Mismatch observed in Margin Obligation as per Daily Margin Statements and as per Exchange Working – 8 clients, 8 instances (total 20 instances)

Amounts ranged from Rs. 1,85,202/- to Rs. 57,43,565 in 7 instances. However, for one UCC (no. 500xxx53) TM collected extra margin amount of Rs. 5,17,002.38 from the client.

Accordingly, it was alleged that the Noticee had violated provisions of Clause 4 and 5 of SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017, NSE circular NSE/COMP/35125 dated June 15, 2017 & NSE/COMP/35260 dated June 30, 2017, NSE/INSP/43069 dated December 31, 2019, NSE/INSP/43724 dated March 02, 2020, Exchange circular

NSE/INSP/45191 dated July 31, 2020 and NSE/COMP/48531 dated June 09, 2021.

14.4.2. In this regard, I note the following from the material available on record:

Sr. No.	Client Code	Client Name	Amount as per Daily Margin Statements (Rs.)	Amount as per Exchange Working (Rs.)	Differences (Rs.)
1	802xxx26	ORxxT FINxxxxAL CAxxxAL	36,89,823.72	49,09,312.20	12,19,488.48
2	500xxx53	NxxI ENTERxxxxxS	25,64,776.88	20,47,774.50	-5,17,002.38
3	501xxx54	STxxK PLxxxT xxxVAxx xxxITxx	82,94,244.48	1,03,88,750.66	20,94,506.18
4	500xxx02	SUxxxxSURE GxxxAL IxxESxxxNT PxxxAxx LxxxTxx	89,13,250.91	1,14,95,471.78	25,82,220.87
5	600xxx84	DHAxxxxxRA SUMxxxxxxNDRA SxxxH	1,84,30,095.39	2,41,73,660.51	57,43,565.11
6	600xxx35	SxxxxY AGRxxxL	14,16,966.09	16,02,168.72	1,85,202.63
7	500xxx93	ANxxxI AGAxxxL	76,66,818.19	95,76,433.30	19,09,615.10
8	802xxx60	MAxxxxA BAxxxL	14,47,854.10	17,21,846.49	2,73,992.39

14.4.3. In this regard, I note that Clause 4 and 5 of SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 reads as under:

"…

4. Margin Requirement.

In order to avail margin trading facility, initial margin required shall be as under;…

Category of Stock	*Applicable margin*
Group I stocks available for trading in the F & O Segment	*VaR + 3 times of applicable ELM**
Group I stocks other than F&O stocks	*VaR + 5 times of applicable ELM**

**For aforesaid purpose the applicable VaR and ELM shall be as in the cash segment for a particular stock.*

5.The initial margin payable by the client to the Stock Broker shall be in the form of cash, cash equivalent or Group I equity shares, with appropriate hair cut as specified in SEBI Master circular no. SEBI/HO/MRD/DP/CIR/P/2016/135 dated December 16, 2016.

…"

14.4.4. In this regard, the Noticee has inter alia contended that, "…*It is relevant to note that the circulars alleged to have been violated above have no relevance to the facts of the instant case. It ought to be considered that the circulars alleged to have been violated provide for the guidelines on Margin Trading Facility. As such, it is humbly submitted that the Notice fails to clearly*

delineate the specific regulatory obligation which the Noticee has violated…".

In this regard, I note that the Circulars alleged to have been violated inter alia states the margin required to avail margin trading facility and I also note that alleged violation in this regard is with respect to the mismatch in margin obligation. Therefore, the Noticee's contentions are devoid of merit and hence not acceptable.

14.4.5. In this regard, I also note that the Noticee's submissions, "…*it is respectfully submitted that the Noticee had at all times adequate collaterals in the daily margin statements to cover the margin requirement calculated by the Exchanges. Further, there is absolutely no shortfall in the amount of margin collected form the clients on the given date…"* are in nature of mere statements as neither relevant details nor any documentary evidence whatsoever has been provided by the Noticee in support of its contention. Therefore, the Noticee's contentions are not acceptable.

14.4.6. Further in this regard, I note from the material available on record that the Noticee's submissions to SEBI in response to the findings of inspection earlier were in nature of admission in so far as the Noticee had inter alia submitted that, "…*Due to a back-office issue, there was an error in capturing the margin requirement in the SMTF segment in the Daily Margin Statement for a few instances … This issue has been rectified effective from 26th Feb 2024."*

14.4.7. In view thereof, I find that that the allegation that mismatch was observed in Margin Obligation as per Daily Margin Statements and as per Exchange Working – 8 clients, 8 instances amounts ranging from Rs. 1,85,202 to 5743565 and that for UCC 500xxx53 TM charged extra margin amount of Rs. 517002.38 from the client, stands established. Therefore, I hold that the Noticee has violated provisions of Clause 4 and 5 of SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017, NSE circular NSE/COMP/35125 dated June 15, 2017 & NSE/COMP/35260 dated June

30, 2017, NSE/INSP/43069 dated December 31, 2019, NSE/INSP/43724 dated March 02, 2020, Exchange circular NSE/INSP/45191 dated July 31, 2020 and NSE/COMP/48531 dated June 09, 2021.

14.5. Finding E: Verification of advance brokerage:

14.5.1. In this regard, the following was inter alia observed and alleged:

1. It is observed that member had charged brokerage to non -traded clients during the inspection period.

   Total 197 clients.
   Amount of excess Brokerage charged Rs. 23,26,329.

2. It is observed that member had not refunded the Excess amount of brokerage collected during inspection period

   Total 135 clients.

   Amount of Brokerage not refunded Rs. 21,61,137.

Accordingly, it was alleged that the Noticee had violated the provisions of Clause 18 of Annexure 4 of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011 and MCX Circular: MCX/INSP/400/2017 dated October 30, 2017 and MCX/MEM/089/2023 dated February 09, 2023.

14.5.2. In this regard, I note that Clause 18 of Annexure 4 of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011 reads as under:

"…

18. The Client shall pay to the stock broker brokerage and statutory levies as are prevailing from time to time and as they apply to the Client's account, transactions and to the services that stock broker renders to the Client. The stock broker shall not charge brokerage more than the maximum brokerage permissible as per the rules, regulations and bye-laws of the relevant stock exchanges and/or rules and regulations of SEBI.

…"

14.5.3. In this regard, I note that the Noticee has inter alia submitted that, "…*the aforesaid MCX Circular deals with the advertisement code and in no manner*

deals with the instant case. As such, it is humbly submitted that the Noticee cannot be said to be in violation of the MCX Circular… the Notice clearly fails to delineate the charge in terms of violation of the MCX Circular dated October 30, 2017…"

In his regard, I note from the plain reading of Annexure A to MCX Circular MCX/INSP/400/2017 dated October 30, 2017 that the said circular inter alia mentions about the violation with respect to excess brokerage recovered from the clients.

As regards the MCX Circular MCX/MEM/089/2023 dated February 09, 2023, I note that the said circular is inter alia with respect to code of advertisement for stock brokers.

14.5.4. In this regard, the Noticee has submitted that, "…*the Noticee runs a subscription program to meet the needs of different segments of clients. This includes various value-added services to the clients such as concession in DPC charges, order charges, providing dedicated risk management facilities, onboarding and training charges and concession in brokerage…since the subscription fees is not purely a brokerage plan but is towards various value-added services that are offered to the clients, upon receipt of their explicit consent, it should not be termed as pre-paid brokerage linking it only to the trades and its refund to the client is not warranted…"*

14.5.5. In view thereof, having regard to the contentions of the Noticee and to the material available on record, I note that the alleged violation of provisions of Clause 18 of Annexure 4 of SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011 and MCX Circular: MCX/INSP/400/2017 dated October 30, 2017 and MCX/MEM/089/2023 dated February 09, 2023, has not been brought out clearly along with specific details. Therefore, I am inclined to allow the benefit of doubt to the Noticee in this regard.

14.6. Finding F: Transactions in corporate bonds through Request for Quote (RFQ) platform by Stock Brokers:

14.6.1. In this regard, the following was inter alia observed and alleged:

In the month of July, 2023 to October, 2023, it was observed that member had not done at least 10% of total secondary trades by value in Corporate Bonds (CBs) in the month by placing OTO (One to One) /OTM (One to Many) quotes on the RFQ platform and Member had to meet the 10% minimum trade value of Rs. 114.40 Cr. whereas only amount of Rs. 5 Cr. was traded on RFQ thus there was a shortfall of Rs. 109.40 crores in all these months combined.

Accordingly, it was alleged that the Noticee had violated the provisions of Clause 2(a) of SEBI Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/083 dated Jun 02, 2023.

14.6.2. In this regard, I note that Clause 2(a) of SEBI Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/083 dated Jun 02, 2023 reads as under:

"…

a. With effect from July 01, 2023, for all the trades in proprietary capacity, SBs shall undertake at least 10% of their total secondary market trades by value in CBs in that month by placing/seeking quotes through one-to-one (OTO) or one-to-many (OTM)mode on the RFQ platform of stock exchanges.

…"

14.6.3. In this regard, I note the follwoing from the material available on record:

Month	**Shortfall in amount to be traded on RFQ Platform (Amount in Rs. Crores)**
July, 2023	20.65
August, 2023	48.12
September, 2023	21.64
October, 2023	19.00
Total	**109.40**

14.6.4. In this regard, I note that the Noticee has inter alia submitted that, "…*NSE through its email dated February 01, 2024, has already issued an advisory*

to the Noticee …".

In this regard, I note that similar reply was provided by the Noticee to SEBI in its response to the findings of inspection. However, the same had not been evidently negated. Further in his regard, on perusal of NSE email dated February 01, 2024, as submitted by the Noticee, I note that the NSE had advised Noticee to ensure compliance with Clause 2(a) of SEBI Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/083 dated Jun 02, 2023. Therefore, I am inclined to allow benefit of doubt to the Noticee in this regard.

14.7. Finding G: Cyber Security and Cyber Resilience Framework:

14.7.1. In this regard, the following was inter alia observed and alleged:

As per the closure report submitted, open vulnerabilities had not been remedied within 3 months post the submission of VAPT report and it was observed from the submission of TM that till June 2023 – 37, 157 and 33 vulnerabilities respectively under high, medium and low category were not closed.

Accordingly, it was alleged that the Noticee had violated the provisions of Para 44 of cyber security & cyber resilience framework for stock brokers dated December 03, 2018 read with SEBI circular on "Modification in cyber security and cyber resilience framework for stock brokers/ depository participants" dated June 07,2022.

14.7.2. In this regard, I note that Para 44 of SEBI Circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018 on cyber security & cyber resilience framework for stock brokers dated December 03, 2018 read with SEBI circular on "Modification in cyber security and cyber resilience framework for stock brokers/ depository participants" dated June 07,2022 reads as under:

"…

44.Remedial actions should be immediately taken to address gaps that are identified during vulnerability assessment and penetration testing.

…

4.Any gaps/vulnerabilities detected shall be remedied on immediate basis and compliance of closure of findings identified during VAPT shall be submitted to the Stock Exchanges/ Depositories within 3 months post the submission of final VAPT report.

…"

14.7.3. In this regard, I note the following from the material available on record:

Audit	Open high/critical vulnerability	Open medium vulnerability	Open low vulnerability
VAPT	42	64	86
ATR	42	64	86

14.7.4. In this regard, I note that the Noticee has inter alia submitted that, "…*closing the vulnerabilities is not on account of the Noticee but factors which were beyond their control. It is relevant to note that all in-scope applications are empanelled vendors with stock exchanges and every version of software which they release is certified and approved by the exchanges, before being released to vendors …"*

In this regard I note that the Noticee's submissions are in nature of mere statement as neither relevant details nor any documentary evidence whatsoever has been provided by the Noticee in support of its contention. Further in this regard, I also note that the provisions alleged to have been violated were applicable to the entire class of intermediary and not just Noticee alone. Therefore, the Noticee's contentions are devoid of merit and hence not acceptable.

14.7.5. I further note that the Noticee's submissions are in nature of admission in so far as the Noticee has inter alia submitted that, "…*ATR report submitted in June 2023 identified 247 open findings out of a total of 1,554…"*

In view thereof, I find that that the allegation that as per the closure report submitted, open vulnerabilities had not been remedied within 3 months post the submission of VAPT report and it was observed from the submission of TM that till June 2023 – 37, 157 and 33 vulnerabilities respectively under

high, medium and low category were not closed, stands established. Therefore, I hold that the Noticee has violated provisions of Para 44 of cyber security & cyber resilience framework for stock brokers dated December 03, 2018 read with SEBI circular on "Modification in cyber security and cyber resilience framework for stock brokers/ depository participants" dated June 07,2022.

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act, 1992?

15. It has been established in the foregoing paragraphs that Noticee had violated provisions of SEBI and Exchange Circulars.

16. In this regard, the Noticee has interalia contended that, "*alleged violations, if any, are technical, procedural and venial breaches with little to no adverse impact... In no manner can these alleged violations be seen to represent any systemic issue with the Noticee's operations. There is no account of any loss having been caused to the investors due to actions of the Noticee and not a single investor complaint against the Noticee with respect to contents of the Notice has been recorded. Additionally, none of the alleged violations were premediated by the Noticee or were on account of any wilful default*…" while citing the judgments of Hon'ble SAT in the matter of State Bank of India vs SEBI, Religare Securities Ltd vs SEBI, DSE Financial Services Ltd vs SEBI, SEBI order in the matter of inspection of Indiabulls Mutual Fund.

The Noticee has further contended, "…*imposition of penalty would cause irreparable prejudice to the Noticee's reputation which not only affects the Noticee but also the clients who are availing the Noticee's services…"* In this regard, the Noticee has cited the judgments of Hon'ble Supreme Court in the matters of Siddharth Chaturvedi v. SEBI and Adjudicating Officer, SEBI v. Bhavesh Pabari, judgments of Hon'ble SAT in the cases of Cabot International Capital Corporation v. Adjudicating Officer, SEBI, Piramal Enterprises Limited v. SEBI, DSE Financial Services Ltd vs SEBI, Samrat Holdings Limited vs SEBI.

17. In this regard, I note that each matter may be peculiar in its facts and circumstances based on which the violations are ascertained. In this regard, I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Hence, any generic parallel drawn would be devoid of merit. Further in this regard, I note that the alleged violations by the Noticee were of the extant applicable provisions of law that were otherwise applicable to that entire category of the intermediary viz., SEBI Registered Stock Brokers and not just about minor procedural aspects specific to the Noticee only.

18. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia held that:

> *" ... In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established .... "*

19. Therefore, for the above violation, as brought out in the foregoing paragraphs, I find that the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act which provides as following:

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

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

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

> **SEBI Act**
>
> *"……...*
>
> *Factors to be taken into account while adjudging quantum of penalty.*
>
> *15J. While adjudging quantum of penalty under 15- or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—*
>
> *a. the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

b. the amount of loss caused to an investor or group of investors as a result of the default;

c. the repetitive nature of the default.

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

……..”

S

21. In the instant matter, I note that the material on record does not indicate the amount of disproportionate gain or unfair advantage made by the Noticee, and the amount of loss caused to an investor or group of investors as a result of the aforesaid violations by the Noticee, nor does it specifically indicate that the violations committed by the Noticee are repetitive in nature. However, I note that the Noticee being a SEBI registered Stock Broker was required to comply with the applicable provisions of securities law, which it failed to, as dealt with and brought out in the foregoing and which SEBI is duty bound to enforce compliance of. Such non-compliance accordingly needs to be dealt with suitable penalty.

E. ORDER

22. Considering the facts and circumstances of the instant case, the material available on record, the factors mentioned in preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Rules, I hereby impose a penalty of Rs. 5,00,000/ (Rupees Five Lakhs Only) on the Noticee under Section 15HB of SEBI Act, 1992, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case.

23. The Noticees shall remit /pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

24. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said

amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

25. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the SEBI Rules.

DATE: July 16, 2025 **AMAR NAVLANI**
PLACE: MUMBAI **ADJUDICATING OFFICER**