BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/NH/RJ/2023-24/ 27902]

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

In respect of

Guiness Securities Limited

PAN AAACG9843L

CIN U51226WB1986PLC222771

Registration Number INZ000167037

10, Canning Street,5th floor,

Kolkata 700001

In the matter of Trading Members in Illiquid Stock Options at BSE

FACTS OF THE CASE IN BRIEF

1. As part of ongoing surveillance, Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") came across instances/internal alerts wherein a set of entities were seen executing reversal trades in options on individual stocks ('stock options') in the Equity Derivative Segment of the BSE. Accordingly, examination of trading in the stock options segment of BSE was done for the period April 1, 2014 to March 31, 2015 from the perspective of examining trading of these entities. Pursuant thereto, an *ex-parte ad interim* Order ref. No. WTM/RKA/ISD/106/2015 dated August 20, 2015 (hereinafter referred to as "**Interim Order**") was passed by SEBI in the matter of Illiquid Stock Options

restraining 59 persons /entities from buying, selling or dealing in the securities market, either directly or indirectly, in any manner, till further directions.

2. Thereafter, confirmatory Orders dated July 30, 2016, August 22, 2016 and August 24, 2016 (collectively referred to as "**Confirmatory Orders**") were passed by SEBI confirming the directions issued vide the Interim Order against all 59 persons /entities.

3. The modus operandi that was mentioned in the Interim Order and Confirmatory Orders, briefly stated, was that certain entities (clients) had continuously made profits and certain entities (clients) had continuously made losses by reversing their trades or executing reversal trades in various individual Stock Options contracts on BSE's Stock Options segment. In the Interim order, these reversal trades were also referred to as 'non-genuine trades'.

4. Subsequent to the passing of the aforementioned Interim Order against 59 persons /entities, SEBI passed an Interim Order dated February 17, 2016 against 22 Trading Members ('Brokers') in the same matter of Illiquid Stock Options. However, the said order was set aside by Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT"**) vide orders dated February 25, 2016, March 04, 2016, March 09, 2016, March 14, 2016, March 15, 2016, March 18, 2016 and April 05, 2016. Pursuant to the appeal, in terms of the order of the Hon'ble Supreme Court dated July 01, 2016, SEBI passed Order No. WTM/RKA/ISD/94/2016 dated August 12, 2016 in the matter stating, *inter alia,* that a final view for appropriate action be taken after the completion of the ongoing investigation in the matter.

5. The investigation was carried out in the instant matter for the period April 01, 2014 – September 30, 2015 (hereinafter referred to as "**IP"/ "Investigation Period**"), which is the same as the examination period referred to in the Interim

Order dated February 17, 2016 in respect of Brokers in the matter of Illiquid Stock Options.

6. Trade data of BSE's Stock Options segment during the IP for the Illiquid Stock Options was analysed to identify reversal trades. Pursuant to said analysis, it was observed that a total of 2,91,744 reversal trades were executed by 14,720 entities through 192 Brokers during the IP. The aforesaid reversal trades comprised 81.40% of all the trades executed in the BSE Stock Options Segment during the IP.

7. In this context, it is alleged that Guiness Securities Limited (hereinafter referred to as "**Noticee**") being one of the aforementioned 192 stock brokers did not exercise due care and diligence in the conduct of its business while dealing with its clients, which is in violation of Schedule II A (2) of Code of Conduct for Stock Brokers r/w Regulation 9 (f) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as "**Broker Regulations**").

8. In view of the above, SEBI had initiated Adjudication Proceedings against the Noticee viz. Guiness Securities Limited.

APPOINTMENT OF ADJUDICATING OFFICER

9. Shri Suresh Menon was appointed as Adjudicating Officer(hereinafter referred to as "**AO**"), under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**"), vide communique dated September 17, 2021 to inquire into and adjudge under section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), the aforesaid alleged violations by the Noticee. Pursuant to the superannuation of Shri Suresh Menon, the undersigned was appointed as Adjudicating Officer vide communique dated July 27, 2022.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

10. A show cause notice dated June 16, 2022 (hereinafter referred to as "**SCN**") was issued to Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why, an inquiry should not be initiated against Noticee and penalty, if any, should not be imposed upon it under the provision of Section 15HB of SEBI Act for the aforesaid violations alleged to have been committed by it.

11. The allegations levelled against Noticee in the SCN are, *inter alia,* briefly stated as under:

i *BSE had issued notice no. 20130307-21 dated March 07, 2013 on e-Boss to all the Trading Members (brokers) wherein casting an obligation on the broker to, inter alia, monitor and report reversal of trades in the derivatives segment. BSE notice no. 20130307-21 (addressed to all the trading members) inter alia, indicated the list of alerts that will be generated by BSE which includes the reversal of trades in the derivatives segment. Further, in terms of the aforesaid notice, every broker was necessarily required to frame a surveillance policy, inter alia, covering suspicious/manipulative activity identification and reporting process.*

ii *The aforesaid BSE notice also casts an obligation on the Trading Member (Broker) to monitor and report alerts specifically mentioning the following:*

> *"*
> *…..*
> *The trading members are hereby further informed that the aforementioned transactional alerts are indicative in nature and the trading members can derive their own alerts in addition to the said transactional alerts as per their surveillance policy.*
>
> *……*
>
> *Monitoring and reporting:*
> *1. For effective monitoring, Trading Member shall:*
> *a. Frame a surveillance policy covering:*
> *i…. ii….*
> *iii. Suspicious / Manipulative activity identification and reporting process.*
> *iv…..*
>
> *b. The surveillance policy of the Trading Member shall be approved by its Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) as the case may be.*
> *c. A quarterly MIS shall be put up to the Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) on the number of alerts pending at the beginning of the quarter, generated during the quarter, disposed off*

during the quarter and pending at the end of the quarter. Reasons for pendency shall be discussed and appropriate action taken. Also, the Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) shall be apprised of any exception noticed during the disposition of alerts.

d. *The surveillance process shall be conducted under overall supervision of its Compliance Officer.*

e. *Designated directors / partners / proprietor / Compliance Officer would be responsible for all surveillance activities carried out by the Trading Member and for the record maintenance and reporting of such activities.*

2. Internal auditor of Trading Member shall review the surveillance policy, its implementation, effectiveness and review the alerts generated during the period of audit. Internal auditor shall record the observations with respect to the same in their report."

iii *However, as informed by BSE vide email dated November 06, 2020, no broker had reported any suspicious transactions to exchange being executed on the Stock Options segment of BSE during I.P. None of the brokers generated any alerts or reported any reversal of trades executed by their respective clients.*

iv *Without a system in place to identify repeated trade reversals between the same clients, the brokers facilitated those clients in executing fraudulent transactions in the stock market who transferred profits and losses to each other in a pre-meditated manner.*

v *Trade data pertaining to these 2,91,744 non-genuine trades formed the source data for the instant case against stock brokers. The total number of contracts during the I.P. was 23,885 contracts.*

Details of trading in all contracts of BSE's Stock Options segment during the I.P.

vi *On analyzing the source data, the data was segregated based on scenarios so as to identify scenario-wise violations by a Broker and the details are given below:*

Scenario	***Particulars***	***Count of Brokers***	***Total number of non- genuine trades (both client and counterparty client)***	***Cumulative non-genuine trades through Brokers after removing duplicates (same broker for both clients)***	***As a % of total transactions***
1	*Same Broker for both clients on both legs of trade reversal*	*19*	*8528*	*4264*	*0.74*
2	*Different Broker for both clients on both legs of trade reversal*	*189*	*574900*	*574900*	*99.25*

3	*Trade reversals involving three Brokers*	*8*	*60*	*59*	*0.01*
	Total	***192****	***5,83,488***	***5,79,223***	***100***

**Note – There are 3 unique brokers appearing in Scenario 1 and the remaining 16 brokers of Scenario 1 are overlapping with 189 unique brokers appearing in Scenario 2. Accordingly, the total Brokers through whom 2,91,744 non-genuine trades have been executed is 3+189 = 192 brokers.*

Names of 8 brokers appearing in scenario 3 are overlapping with names appearing in either Scenario 1 or Scenario 2.

vii Repeated reversals with at least 4 transactions or more (2 cycles of reversals between the same set of PAN numbers) on the same day in a particular contract between two unique PAN numbers were examined. Accordingly, it was observed that 5316 unique sets of PAN numbers have executed repeated reversals with at least 4 transactions or more (2 cycles of reversal) as envisaged in Scenario 2 through 125 different Brokers including the Noticee.

viii Hence, it is alleged that Noticee, being one of the aforementioned 125 brokers, failed to exercise care and diligence in the conduct of business while dealing with its clients and therefore not in compliance with Schedule II A (2) of the Code of Conduct for Stock Brokers r/w regulation 9 (f) of the Broker Regulation.

12. The SCN, sent to Noticee through speed post acknowledgement due (hereinafter referred to as "**SPAD**"), was delivered on July 08, 2022. Noticee was given 15 (fifteen) days to make its submissions in respect of the allegations made in the SCN. No reply was received from the Noticee within the said 15 days.

13. Thereafter, vide Intimation Letter dated December 08, 2022, Noticee was informed regarding SEBI Settlement Scheme for Stock Brokers, 2022(hereinafter referred to as "**Settlement Scheme, 2022**") framed by SEBI. Further, it was conveyed that in case Noticee did not wish to avail of the facility under the Settlement Scheme, 2022, it could file further reply to the SCN within 30 days of its receipt. An email dated January 12, 2023 was received from the Noticee. The said mail was marked to the Core Settlement Guarantee Fund Committee of the National Stock Exchange of India Ltd. In the said mail, the Noticee, *inter alia,* stated as under:

    "We are in receipt of SEBI letter No. SEBI/EAD-2/NH/RJ/00764/4/2023 dated January 06, 2023 informing us that the settlement scheme for brokers has been introduced. As we are covered by the scheme, we wish to avail of the same.

However, as you are the custodian of all our funds and assets, we request you to remit the Registration fee of Rs. 29500/- and Settlement amount of Rs.1,00,000/- towards our availment of the said settlement scheme for brokers.
In the alternative, a sum of Rs.1,29,550/- (including bank charges) may be released from our bank account to enable us to make this payment to SEBI."

14. The Settlement Scheme for Stock Brokers, 2022 was available till January 19, 2023**.** As per available records, I note that Noticee has not availed the settlement facility under the Settlement Scheme, 2022. Consequently, adjudication proceedings were resumed in the instant matter.

15. In the interest of natural justice, vide Hearing Notice dated March 14, 2023, Noticee was granted an opportunity for a personal hearing on March 27, 2023. The aforesaid Hearing Notice was duly served on the Noticee through email and SPAD. Further, the Noticee was advised to file its reply to SCN, if any before March 27, 2023. In this regard, the Noticee vide the email dated March 18, 2023, submitted as under:

    "We acknowledge the receipt of your notice of hearing dated March 14, 2023 regarding the captioned matter.
    Please refer to our email dated January 12, 2023 addressed to The Core Settlement Guarantee Fund Committee of NSE wherein we have expressed our willingness to avail the SEBI Settlement Scheme and requested the committee to release the payment of Rs.1,29,550/- (Registration fee of Rs. 29500/- and Settlement amount of Rs.1,00,000/-).
    We are awaiting NSE to release this amount so that we can avail the scheme."

16. However, Noticee did not attend the hearing scheduled on March 27, 2023. In the greater interest of justice, another opportunity for a personal hearing on April 18, 2023 was granted to the Noticee.

17. Mr. Kamal Kumar Kothari, the authorised representative of the Noticee, availed the opportunity of a personal hearing on behalf of the Noticee on April 18, 2023. During the hearing on April 18, 2023, the authorized representative of the Noticee reiterated the earlier submissions made by the Noticee vide emails dated January 12, 2023 and March 18, 2023.Further, the Noticee was granted time till April 28, 2023 to make additional submissions.

18. In light of the requests made by the Noticee and in the interest of natural justice, Noticee was granted repeated opportunities to submit additional reply as tabulated below:

Table 1

Date and Particulars of the request by Noticee	**Response**
Vide email dated April 28, 2023, Noticee requested further time.	*The request was acceded to and Noticee was advised to submit additional submissions by May 02, 2023.*
Vide email dated May 02, 2023, Noticee requested for additional time of 15 days.	*The request was acceded to and Noticee was advised to submit additional submissions on merits, by May 08, 2023.*
Vide email dated May 08, 2023, Noticee requested 10 more days to procure all the documents to prepare the reply and submit the same.	*The request was acceded to and Noticee was advised to submit additional submissions on merits, by May 30, 2023.*

19. The Noticee submitted its additional submission on May 30, 2023. The Noticee has, *inter alia,* submitted as under:

    i. *First and foremost, the Noticee would like to question about the establishment of the charges levied against them after the time span of six calendar years. The trades in question have been executed way back in the month of March of 2015.Surprisingly, it took SEBI more than seven calendar years to investigate the matter and impose such charges and issue show cause notice to the Noticee on the charge of failing to exercise care and diligence in the conduct of business while dealing while dealing with its clients. SEBI, being the regulator of securities* *market, has every possible infrastructure to gather the information and start the investigation at a reasonable time. Such delay in initiating the proceedings of the alleged market manipulation is raising question on the conduct of SEBI. The Show Cause Notice has no justification on the unreasonable delay in initiating the proceedings of such serious allegations against the Noticee.*

ii. *SEBI although being the creator of the SEBI (Stock Brokers) Regulations, 1992 cannot initiate any proceedings against any entity at indefinite period of time. The initiation and finalisation of each proceeding should be done within a reasonable time frame. The Noticee is relying on the Hon'ble Securities Appellate Tribunal (SAT) judgements of Garware Polyester Limited v. SEBI, Subhkam Securities Private Limited v. SEBI and Ashok Shivlal Rupani v. SEBI.*

iii. *It is evident from the conduct of SEBI that there has been inordinate delay on the part of SEBI in initiating the proceedings. Such delay defeats the purpose of initiation of proceedings for appropriate action. Commencing inquiry and imposing penalty at this belated stage will be the end of justice. The exercise of issuance of the Show Cause Notice after more than 7 years is totally unreasonable and should be withdrawn immediately.*

iv. *It is quite understandable that tracing data and information of more than 7 years old is a very difficult task. The inquiry has been set up after the delay of more than 7 years and the Noticee is not in a position to gather such old data of the alleged trades. The Noticee has already been debarred by SEBI and terminated the business of the notice. All the employees of the notice have left the organisation way back. The Noticee is currently have very limited resources refer or produce any data, statement or report with respect to the alleged charges. The Noticee left with no option but to rely only on the trade data annexed with the Show Cause Notice. In the absence of data and documents the Noticee is not in a position to submit its clarification more efficiently.*

v. *In response to point no. 1 to 19 of the Show Cause Notice save and except what are matters of record each and every allegation is denied and disputed. The contents in these points are the outcome of SEBI investigation in terms of the trading activities of various entities who had dealt in the Futures & Options segment of BSE.*

vi. *In response to point no. 20 and 21 of the Show Cause Notice save and except what are matters of record each and every allegation is denied and disputed. Just because the Noticee being one of the alleged 125 trading members whose client have dealt in the Futures and Options segment of BSE does not mean the Noticee has failed to exercise care and diligence in the conduct of business while dealing with its clients. The Noticee was in regular practice to exercise proper care and due diligence while dealing with its clients which has been briefed hereunder:*

   a) *The Noticee have properly executed account opening form with the observed clients and have handed over the copy of duly executed KYC form alongwith Risk Disclosure Document for dealing in Derivatives contracts. Trading in derivatives has always been more risky as compared with the cash market segment. The same has been briefly explained in RISK DISCLOSURE DOCUMENT FOR CAPITAL MARKET AND DERIVATIVES SEGMENTS) of SEBI Circular no. CIR/MIRSD/16/2011 dated 22.08.2011 which is reproduced hereinbelow for the sake of convenience:*

   "<u>1.2 Risk of Lower Liquidity: Liquidity refers to the ability of market participants to buy and/or sell securities / derivatives contracts expeditiously at a competitive price and with minimal price difference. Generally, it is</u>

assumed that more the numbers of orders available in a market, greater is the liquidity, Liquidity is important because with greater liquidity, it is easier for investors to buy and/or sell securities / derivatives contracts swiftly and with minimal price difference, and as a result investors are more likely to pay or receive a competitive price for securities/ derivatives contracts purchased or sold. There may be a risk of lower liquidity in some securities/ derivatives contracts as compared to active securities / derivatives contracts. As a result, your order may only be partially executed, or may be executed with relatively greater price difference or may not be executed at all.

1.2.1 Buying or selling securities / derivatives contracts as part of a day trading strategy may also result into losses, because in such a situation, securities / derivatives contracts may have to be sold / purchased at low/ high prices, compared to the expected price levels, so as not to have any open position or obligation to deliver or receive a security/ derivatives contract

1.3 Risk of Wider Spreads: Spread refers to the difference in best buy price and best sell price. It represents the differential between the price of buying a security / derivatives contract and immediately selling it or vice versa. Lower liquidity and higher volatility may result in wider than normal spreads for less liquid or illiquid securities / derivatives contracts. This in turn will hamper better price formation"

b) *The Noticee being a registered investor has facilitated services to client for trading under the purview of the guidelines framed by SEBI and exchange. The Clause no. 1.2 and 1.3 of the aforesaid SEBI circular itself states that sometimes illiquid contracts create wider price difference. It also states that buying or selling in derivatives may result in losses because of purchasing the contract at higher price or selling it at a lower price compared to the expected price levels. It is nowhere mentioned in the aforesaid circular or in any of the regulations that trading in illiquid contracts will results in creating artificial volume or creating false or misleading appearance of trading. If trading in illiquid securities or contracts deemed to be creating false or misleading appearance, then the Clause 1.2 and 1.3 of the aforesaid SEBI Circular must be withdrawn and no trading shall be allowed in any of the illiquid securities/contracts listed on Stock exchanges.*

c) *SEBI had decided to introduce one or more liquidity enhancement schemes (LES) to enhance liquidity of illiquid securities in their equity derivatives segments. The same were communicated to the Stock Exchanges vide Circular no. CIR/DNPD/5/2011 dated 02.06.2011. The Noticee has referred the aforesaid SEBI circular along with various BSE notices and traded in the options contract. On what basis the Noticee has been alleged for failing in exercising care and diligence in the conduct of business while dealing with its clients when SEBI and BSE both were collectively working together to create promote participation and creating volumes in the illiquid securities in the equity derivatives segments? If trading in such illiquid securities or contracts deemed to be creating false or misleading appearance, then why SEBI has permitted Stock Exchanges to introduce liquidity enhancement schemes to enhance liquidity of illiquid securities in their equity derivatives segments?*

d) *The Noticee have provided exposure to the observed clients on the basis of availability of margin as per the extant regulatory guidelines on collection of margin from clients.*

e) *The trades of the observed clients were normal trades done at the online trading platform of Bombay Stock Exchange*

f) *The contracts on which the clients of the Noticee have traded was the Exchange traded derivatives contracts.*

g) *The trades have been executed in the correct client code and no client code modification has been done.*

h) *The pay-in obligations of the trades were timely collected from the observed clients and settled with the Clearing House of the exchange as per the trade settlement cycle.*

i) *The Noticee had hundreds of terminals during the investigation period however, the trading rights for placing orders of clients were restricted to only few terminals.*

j) *The Noticee has complied with the provisions of Clause no. 6 Annexure-A of SEBI Circular No.: MIRSD/SE/Cir-19/2009 dated December 3, 2009 which says that:*

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

The Noticee has updated the financial details of the observed clients by collecting the financial documents before allowing them to trade in the derivatives contracts of BSE.

k) *In the year 2014 BSE was promoting the Equity Derivatives Segment of the exchange and introduced schemes in order to create liquidity in the BSE's Derivatives segment. The permission to introduce the Liquidity Enhancement Scheme was given by SEBI. The same can be verified with SEBI Circular and BSE notices released during the financial year 2014-15 launching scheme like Liquidity Enhancement Incentive Programme for Derivatives'. SEBI Circular no. CIR/MRD/DP/14/2014 dated 23.04.2014and relevant BSE notices for your reference.*

l) *The above promotional scheme was an opportunity to invest and earn from the market and carrying the same intention the clients of the Noticee has traded in the segment. The trades were carried out at exchange traded platform where the process from trading to settlement is done systematically. The trading platform of the exchange does not provide the information of the opposite party or their Stock Broker. Here the opposite parties are unknown and the trade gets executed depending upon the time- price factor and matching of ask and bid price. The Noticee have allowed their clients to transact in the Equity Derivatives segment of BSE after referring the promotional scheme. Being a Trading Member, the Noticee has complied with the KYC norms, margin norms and fulfilled the due diligence while dealing with clients.*

m) *The liquidity in the Equity Derivatives Segment of BSE was not similar to the Equity Derivatives Segment of NSE however, the exchange was promoting for active participation of investors through Trading Members thus it was evident that the volatility in the contracts would be slow with changes of far difference in ask and bid price. Furthermore, the Trading Members could not ascertain what is the intention of the investors or the counter party of the trades. The Noticee have fulfilled its obligation efficiently. The Noticee has not done any kind of non-genuine activity.*

n) *Usually artificial volume is created among a group of traders to trade in a specific stock for a work period of time and then to share in the resulting profits or losses however, the show cause notice says otherwise. As per the show cause notice the alleged non genuine trades are not restricted to any specific contract or between specific set of entities. If so then how the Noticee can be held liable if the non genuine trade is not restricted to any specific contract? Why there was no communication from the exchange or the regulator to the Noticee immediately after the occurrence of such alleged non genuine trades been done in the Stock options segment of BSE?*

o) *BSE, a reputed and decade old stock exchange, has robust surveillance department whose main objective is to maintain market integrity by monitoring price and volume movements (volatility) as well as by detecting potential market abuses (fictitious/ artificial transactions, circular trading. false or misleading impressions, insider trading, etc.). The surveillance activities at BSE are classified under two areas as below:*

- *On line Surveillance: is mainly related to the price movement/ abnormal fluctuation in prices or volumes.*
- *Offline Surveillance: conducting various types of investigations/ analysis as may be warranted.*

p) *The exchange should have sent necessary advice/caution letter to the Noticee and initiate appropriate disciplinary actions in case the trading activity of the clients of the Noticee is observed to be abnormal/non-genuine. Exchange also has the power to levy appropriate penalty depending on the result of the trades. It is quite surprising to say that that no advice/caution letter/communication on any irregularity has been reported on the trades till date by BSE to the Noticee. A sudden show cause and adjudication proceedings initiated by SEBI in relation to same is totally surprising as well as raises many questions on the grounds of the instant proceedings.*

vii. *In response to point no. 22 and 23 of the Show cause notice save and except what are matters of record each and every allegation is denied and disputed. The Noticee has not violated the provisions of Schedule II A (2) of the Code of Conduct for Stock Brokers r/w regulation 9(1) of the SEBI (Regulation. 1992. Here, the ground of the proceedings is questionable firstly, on the basis of delay in its commencement and secondly on the basis of facts which establishes that the Noticee has complied with the regulatory guidelines and have efficiently followed the due diligence while dealing with the clients. Where the grounds itself is in question how the matter can proceed for adjudication? The Noticee is not liable for any penal action.*

viii. *The ground of the allegations levied on the Noticee has been questioned on the basis of various arguments. No connection of the Noticee with the so- called various entities or its clients, who were indulged in the alleged non genuine trades, has been established. The Noticee has not committed any act in contravention to any provisions of SEBI Regulations. In absence of any concrete evidence it will be injustice to impose any penalty on the Noticee. In view of the above the imposition of any penal action on the Noticee would be an attempt to defeat the ends of justice.*

In view of the above submissions the proceedings/inquiry initiated or going to be initiated against the Noticee should be dropped and the Show Cause Notice should be withdrawn.

20. From the foregoing paragraphs, it is noted that the Noticee has been granted sufficient opportunities to submit reply to the SCN, of personal hearing and to make additional submissions on merits. Therefore, I note that the principles of natural justice have been adhered to in the present proceedings.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

21. The issues that arise for consideration in the present case are:

Issue No.1 Whether Noticee has violated Schedule II A (2) of the Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations?

Issue No.2 Does the violation, if any, attract a monetary penalty under Section 15HB of the SEBI Act?

Issue No.3 If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

22. Before proceeding, it is pertinent to refer to the relevant provision of the Broker Regulations, in force at the time of impugned transactions, which are reproduced as under:

Relevant provisions of Broker Regulations:

Conditions of registration.

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

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

A. General

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

PRELIMINARY OBJECTION

23. It is noted that a preliminary objection has been taken on behalf of the Noticee by stating that there has been an inordinate delay in initiating the proceedings and the same has hampered the ability of the Noticee to effectively answer the allegations. In support of its contention, the Noticee has cited the orders passed by Hon'ble SAT in the matter of Garware Polyester Limited v. SEBI, Subhkam Securities Private Limited v. SEBI and Ashok Shivlal Rupani v. SEBI.

24. In this connection, it is noted that the instant case pertains to large-scale execution of non-genuine reversal trade in the ISO segment of BSE during the IP. As enunciated in paragraphs 1 to 4, the investigation relating to instant matter was a complex and time-consuming process. The investigation involved a total of 2,91,744 reversal trades executed by 14,720 entities through 192 Brokers during the IP. To arrive at concrete findings, various steps were taken during the investigation *inter alia* analysis of the trade logs, analysis of the information received from the concerned stock broker, interaction with the officials of the stock exchange, etc.

25. It is also observed that SEBI had passed an Interim order dated February 17, 2016 against 22 trading members including the Noticee in the matter of ISO. However, the said order was set aside by Hon'ble SAT vide its orders dated February 25, 2016, March 04, 2016, March 09, 2016, March 14, 2016, March 15, 2016, March 18, 2016 and April 05, 2016. Thereafter, the aforesaid Orders of the Hon'ble SAT were appealed in the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated July 01, 2016 directed SEBI to pass another order after hearing the concerned entities.

26. Thereafter, SEBI passed an order dated August 12, 2016, in the matter of trading members in ISO on BSE. In the said order, no interim directions were issued against the 22 trading members including the Noticee and it was mentioned that

a final view for appropriate action against the trading members would be taken after completion of the investigation in the matter of trading activities of clients in ISO. Investigation in the matter of trading activities of clients in ISO was completed and adjudication proceedings against 14,720 clients, who had indulged in reversal transactions during IP, were approved by the Competent Authority on April 03, 2018.

27. Pursuant to the completion of the investigation in the matter of trading activities of clients in ISO, the current investigation i.e. in respect of trading members in ISO was initiated. After carefully analysing the huge volume of data involved and the intricacy of transactions involved between multiple clients and their brokers involved in these reversal trades, the investigation in the present matter was concluded in March 2021 and pursuant thereto, the present SCN was issued on June 16, 2022. I may add here that due to the Covid-19 pandemic, the nation faced lockdown, first, in March 2020 and again in May 2021.

28. I note that all relevant and relied upon documents were provided to the Noticee. I also note that after service of the SCN, adequate opportunities were granted to the Noticee to represent its case, through written and oral submissions. It is important to mention that four opportunities vide emails dated April 18, 2023, April 28, 2023, May 02, 2023 and May 08, 2023 were granted to the Noticee to file additional submissions, if any. In the meanwhile, vide Intimation Letter dated December 08, 2022, Noticee was informed about the SEBI Settlement Scheme for Stock Brokers, 2022, in the instant matter.

29. I also note that in its reply the Noticee has not pointed out specifically as to how the purported delay, if any, has prejudiced the Noticee in putting its defence. I note that the Noticee has not stated what record/document/material could not be accessed by it because of the purported delay in the matter. Hence, I note that except for making a bald assertion, nothing has been demonstrated to show any prejudice whatsoever to have been caused to the Noticee that could be

considered a constraining factor in defending the allegation. I, therefore, find that the Noticee had sufficient material, time and opportunity to defend himself.

30. I have perused the orders of Hon'ble SAT in the matter of Garware Polyester Limited v. SEBI, Subhkam Securities Private Limited v. SEBI and Ashok Shivlal Rupani v. SEBI, cited by the Noticee to support its argument. I note that the matter of Garware Polyester Limited and Ashok Shivlal Rupani pertains to instances where there was a delay in the initiation of proceedings by SEBI or there was a delay by SEBI in taking cognizance of the matter when information existed in the public domain. As opposed to these matters, in the present case, it was only pursuant to an extensive investigation being undertaken that the alleged violations by the Noticee came to the fore. In this regard, I refer to the following orders of the Hon'ble Supreme Court and Securities Appellate Tribunal:

    a. In **SEBI v. Bhavesh Pabari** (Civil Appeal No.9798 of 2014), the Hon'ble Supreme Court of India, *inter alia,* held as follows:

        "There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

    b. In the matter of **Bipin R Vora v. SEBI** (MANU/SB/0154/2006 decided on March 22, 2006), the Hon'ble SAT, *inter alia,* held as under:

        "As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate

disciplinary action for the safeguard and improvement of the system/market"

c. In the matter of **Pooja Vinay Jain v. SEBI** (Appeal No. 152 of 2019 decided on March 17, 2020), the Hon'ble SAT, *inter alia,* held as under:

"The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same".

31. In this context, I observe that for the detailed reasons stated earlier, the investigation in the present case required time to arrive at a conclusive report. I further note that Covid-19 lock down restrictions also affected the process of conducting proceedings in the matter.

32. Therefore, the contentions of the Noticee in this regard cannot be accepted.

<u>Issue No. I- Whether Noticee has violated Schedule II A (2) of the Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations</u>?

33. It is alleged that Noticee has failed to exercise due care, skill and diligence in the conduct of its business while dealing with its clients during the IP which in turn facilitated the execution of reversal trades by the clients in ISO contracts at BSE. Therefore, it is alleged in the SCN that Noticee has violated Schedule IIA (2) of the Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations.

34. I observe that BSE had issued notice ref. no. 20130307-21 dated March 07, 2013 (hereinafter referred to as "**BSE notice dated March 07, 2013**"), to all the Brokers including the Noticee casting an obligation upon them to, *inter alia,* monitor and report reversal of trades in the derivatives segment. The said notice

pertains to the 'e-Boss' system, which *inter alia*, indicated the list of alerts that would be generated by BSE including the reversal of trades in the derivatives segment. Further, in terms of the aforesaid notice, every Broker was necessarily required to frame a surveillance policy, *inter alia,* covering suspicious/manipulative activity identification and reporting process.

35. The relevant extract of the aforesaid BSE notice dated March 07, 2013 is reproduced below:

'…..

The trading members are hereby further informed that the aforementioned transactional alerts are indicative in nature and the trading members can derive their own alerts in addition to the said transactional alerts as per their surveillance policy.

……

Monitoring and reporting:

1. For effective monitoring, Trading Member shall:

a. Frame a surveillance policy covering:

…

iii. Suspicious / Manipulative activity identification and reporting process.

b. The surveillance policy of the Trading Member shall be approved by its Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) as the case may be.

c. A quarterly MIS shall be put up to the Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) on the number of alerts pending at the beginning of the quarter, generated during the quarter, disposed off during the quarter and pending at the end of the quarter. Reasons for pendency shall be discussed and appropriate action taken. Also, the Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole *proprietorship firm) shall be apprised of any exception noticed during the disposition of alerts.*

d. The surveillance process shall be conducted under overall supervision of its Compliance Officer.

e. Designated directors / partners / proprietor / Compliance Officer would be responsible for all surveillance activities carried out by the Trading Member and for the record maintenance and reporting of such activities.

2. Internal auditor of Trading Member shall review the surveillance policy, its implementation, effectiveness and review the alerts generated during the period of audit. Internal auditor shall record the observations with respect to the same in their report.'

36. Thus, Noticee was required to necessarily frame a surveillance policy to identify and report suspicious/manipulative activities. As per the aforesaid notice, the Noticee was required to put in place the required procedures and processes duly approved by their relevant authority latest by May 15, 2013.

37. From the perusal of the material on record, I note that the clients of the Noticee had executed 94 non-genuine reversal trades on BSE at a substantial price difference during the IP through the Noticee. The said 94 reversal trades generated an artificial volume of 1,71,42,000 shares on BSE during the IP. In this regard, the *modus operandi* are illustrated through one of the contracts viz. "ANBK14DEC85.00PEW2" executed on December 05, 2014 during the IP below:

Table 2

SL. NO.	1	2
TRADE_DATE	05/12/2014	05/12/2014
CLNT_NAME*	M…	U…
CP_NAME*	U…	M…
ORDER_TIME	10:27:25.761184	11:33:47.583924
CP_ORDER_TIME	09:51:55.574543	11:26:50.049172
ORDER_RATE	2.3	0.55
CP_ORDER_RATE	2.25	0.5
TRADE_TIME	10:27:25.761184	11:33:47.583924
TRADED_QTY	4000	4000
TRADE_RATE	2.25	0.5
MEMBER_NO	3027	6197
MEMBER_NAME	**GUINESS SECURITIES LTD.**	H…
CP_MEMBER_NO	6197	3027
CP_MEMBER_NAME*	H…	**GUINESS SECURITIES LTD.**
RQTY	**4000**	**4000**

* *Some names excised for the sake of confidentiality*

38. It is pertinent to mention that the Noticee had not disputed the execution of the aforesaid 94 reversal trades by its clients as noted from paragraph 5 of the additional reply dated May 30, 2023.

39. As evident from the trade logs, the said 94 reversal trades, involving those with identical quantities, with substantial differences in buy and sell rates, were executed through the Noticee on the stock options segment of BSE during the IP. Further, I note that the position taken was reversed between the clients amongst the same counterparty on the same day, at a substantial price difference. The non-genuineness of these transactions executed by the clients of the Noticee is evident from the fact that there was no commercial basis as to why, within a short

period, the clients of the Noticee reversed the position with their counterparties with significant price differences. The execution of 94 reversal trades, with identical quantities, between same parties and substantial price differences cannot be attributed to sheer coincidence.

40. In this context, I note that BSE vide email dated November 06, 2020 has stated that no broker including the Noticee had reported any suspicious transactions to it being executed on the Stock Options segment of BSE during the IP. Further, the investigation of SEBI brought out that none of the brokers generated any alerts or reported any reversal of trades executed by their respective clients. Thus, it is noted that the Noticee failed to notice these trades. This can only be attributed to the negligence of the Noticee regarding putting an adequate system in place to identify and report such trades.

41. In this regard, reference is made to the matter of **M/s Triveni Management Consultancy Services Ltd. v. SEBI** (Appeal no. 43 of 2013 decided on October 31, 2013) wherein the Hon'ble SAT has, *inter-alia*, held that:

"15.

.. Clearly in almost all deals, orders are placed so as to ensure matching of buy and sell quantity and buy and sell price with counter party, with whom prior tacit understanding existed. ***Buy and sell orders are placed at almost same time between counter party clients, with just difference of a few seconds. Matching of these trades was not noted in a solitary incident or two****, instead, a large number of synchronized trades got matched regularly,* ***most of which were also reversed****.*

.. This Tribunal in Ketan Parekh Vs. Securities & Exchange Board of India (Appeal No. 2 of 2004) held that in order to find out whether a transaction has been executed with intention to manipulate market or defeat its mechanism will depend upon intention of parties which could be inferred from attending circumstances because direct evidence in such cases may not be available.

16.

From foregoing it can be seen that Appellant by allowing its client to trade in fashion as described above which led to manipulation of the market, ***cannot be absolved of responsibility bestowed on him as a market intermediary to provide access to clients without conducting due diligence as required under provisions of law****. Basic duty of due diligence could be least expected from any market participant and failure on part of Appellant in this basic duty and has led to manipulation through synchronized, structured trades,* ***which were also found to be reversal in nature too****, among Mehta Group entities."* (Emphasis supplied)

42. Thus, by not having a system in place to identify repeated trade reversals which it was required to have as per the aforesaid notice of BSE, the Noticee facilitated its clients in executing non-genuine reversal trades in the ISO segment of BSE. Therefore, I note that there was a clear lapse on the part of the Noticee to comply with the said notice of the BSE.

43. Noticee has, *inter alia,* submitted that it has complied with the regulatory guidelines and has efficiently followed due diligence while dealing with the clients. In this regard, Noticee has stated that *"nowhere in any of the regulations or circulars, it has been mentioned that trading in illiquid contracts will results in creating artificial volume or creating false or misleading appearance of trading."* Here, it is noted that trading in illiquid contracts is not a violation of securities laws *per se*. However, in the instant matter the clients of Noticee had executed 94 reversal trades with the same counterparty on the same day, at a substantial price difference during IP. As mentioned above**,** trades cannot be considered as genuine trades. These 94 reversal trades resulted in generation of artificial volume of 1,71,42,000 units. Such a huge, artificial volume tends to distort the market equilibrium. In this regard, Hon'ble SAT in **Global Earth Properties and Developers Pvt Ltd v. SEBI** (Appeal No. 212 of 2020 dated September 14, 2019) has, *inter alia*, held as under:

"11. Having heard the parties at some length we find that the reversal of trades are considered to be non-genuine trades if it involves an entity reversing its buy or sell positions in a contract with substantial buy or sell position with the same counter party during the same day. ….

***12. Such execution of trades, in our opinion, are non-genuine trades and creates artificial volumes giving misleading appearance**. **The reversal of trades executed by the Appellant cannot be called a normal trading transaction in as much as these trades were reversed within a short span ranging from a few seconds to a few minutes with the same counter parties.** By no stretch of imagination, it can be held to be a mere coincidence that the Appellants trades matched consistently with the same counter parties unless there was a meeting of minds with a view to trade at a predetermined time**. Such kind of transaction, in our opinion, is a manipulative device and is also synchronised trading**."* (Emphasis supplied)

In this context, it is noted that the Noticee should have recognized and reported such reversal trades especially in the light of the aforesaid Notice of BSE. From the material on record, it is clear that Noticee did not comply with the mandate of the aforesaid Notice of BSE.

In view of the same, I do not find any merit in this submission of the Noticee.

44. Noticee has contended that the trading platform of the exchange does not provide the information of the opposite party or their stock broker. Further, Noticee has stated that it has no nexus/connection with the entities involved in reversal trades. In this regard, I note that even though the Noticee might not have been aware of the counterparty client or counterparty broker in a transaction, the fact that a certain quantity of shares transacted by its clients was being reversed repeatedly within the same day at substantial price difference should have alerted the Noticee. Here, it is pertinent to mention that the aforesaid 94 reversal trades were executed through the Noticee during the IP. The fact that such trades have been executed through the Noticee has not been disputed. In this regard, Hon'ble

Supreme Court in the matter of **SEBI v. Rakhi Trading Pvt Ltd** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011) has, *inter alia*, held as follows:

> *"92. Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities…"*

Further, it is reiterated that the issue at hand pertains to compliance of the Noticee with the BSE notice dated March 07, 2013. As discussed above, the Noticee did not generate any alerts or reported any reversal of trades executed by its clients during the IP despite specific notice in this regard from BSE.

Thus, this contention of the Noticee cannot be accepted.

45. It is noted that in terms of Regulation 9(f) of Broker Regulations read with Code of Conduct as specified in Schedule II, a stock broker is obligated to act with due skill, care and diligence and abide by various provisions of the SEBI Act and rules and regulations framed therein as well as by the Stock Exchange from time to time. Accordingly, Noticee was under an obligation to abide by the aforesaid notice of BSE *inter-alia* by implementing a system for identification and generation of alerts regarding reversal trades and suspicious trades executed by its clients and reporting the said trades to BSE. As noted above during the IP, the clients of the Noticee had executed 94 non-genuine reversal trades, wherein the positions taken were reversed with the same counterparty on the same day, at a significant price difference. However, despite clear direction from BSE, there is no material on record to show that the Noticee has put in a system place to generate alerts to detect and curb such reversal of trades during IP. I note that by not having a system in place to identify the reversal trades, the Noticee facilitated its

clients in the execution of fraudulent reversal trades in the stock market. Therefore, I hold that Noticee has failed to exercise due care and diligence in the conduct of its business while dealing with the clients.

46. In view of the above, I conclude that the allegation that Noticee has violated the provisions of Schedule II A (2) of the Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations stands established.

<u>Issue No. 2- Does the violation attract monetary penalty under Section 15HB of the SEBI Act?</u>

47. As the Noticee has violated the provisions of Schedule II A (2) of the Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations, I find that Noticee would be liable for monetary penalty under Section 15HB of the SEBI Act. The text of Section 15HB of the SEBI Act is reproduced below:

<u>SEBI Act</u>

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.*

<u>Issue No.3 - What should be the quantum of the monetary penalty</u>?

48. 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: -

<u>SEBI Act</u>

Factors to be taken into account while adjudging the quantum of penalty.

15J*. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

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

(c)the repetitive nature of the default.

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

49. I note that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on the part of the said Noticee.

50. I note that a stock broker is an important securities market intermediary and is, often, the first point of contact for investors. Thus, a stockbroker is required to maintain high standards of integrity, promptitude and fairness in the conduct of its business dealings. It is of utmost importance that every stock broker abides by the relevant regulations, provisions of the SEBI Act, Stock Exchange circulars and various guidelines issued by SEBI/ Stock Exchanges.

51. In the given factual situation, the Noticee failed to exercise due care and diligence in the conduct of its business while dealing with its clients thereby facilitating its clients in the execution of fraudulent reversal trades in the ISO segment of BSE. As noted above, a total of 94 non-genuine trades were executed by clients of the Noticee and an artificial volume of 1,71,42,000 units were generated through such non-genuine trades during the IP.

52. In this context, I note that in **SEBI v. Rakhi Trading Private Limited** (Civil Appeal No. 1969 of 2011), the Hon'ble Supreme Court has held as under:

*"The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the trades in the instant case**, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency on the stock market.**"* (Emphasis supplied)

53. In this regard, in the recent past, there have been orders passed by SEBI against the Noticee. On December 12, 2018, an adjudication order was passed against the Noticee wherein a monetary penalty of Rs. 11,00,000/- (Rupees Eleven Lakh) was imposed under Section 15HB of SEBI Act read with Section 19G of Depositories Act. Further, vide final order dated June 30, 2022, directions including monetary penalties of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh) under Section 15HA of SEBI Act and of Rs. 50,00,000/- (Rupees Fifty Lakh) under Section 23D of SCRA have been imposed on the Noticee.

54. As a regulator of the capital markets, SEBI has to safeguard the interest of investors and protect the integrity of the securities market. Since the conduct of Noticee was not in the interest of investors in the securities market, a penalty needs to be imposed, or else it may undermine investors trust in the securities market.

55. Based on the aforesaid observations, I am of the view that a monetary penalty needs to imposed on the Noticee.

<u>ORDER</u>

56. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in the exercise of powers conferred upon me under Section 15-I of the SEBI Act 1992

read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 4,00,000/-(Rupees Four Lakhs only) on Noticee i.e. Guiness Securities Limited, under the provision of Section 15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

57. Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order through the 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.
In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

58. Copy of this Adjudication Order is being sent to the Noticee and SEBI in terms of Rule 6 of the Adjudication Rules.

Place: Mumbai	**N HARIHARAN**
Date: June 30, 2023	**ADJUDICATING OFFICER**