



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

DESIGNATED AUTHORITY

By Speed Post & E-mail

SEBI/EAD-8/PM/GD/ ^{26342/1} /2021

September 29, 2021

Fairwealth Securities Ltd.

(PAN: AAACF8795N)

651-652, Udyog Vihar,
Phase – V, Gurgaon,
Haryana- 122001
Email: compliance@fairwealth.in

Notice under Regulation 25(1) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 in the matter of "Fairwealth Securities Ltd."

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") appointed the undersigned as the Designated Authority (DA) in exercise of the powers under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Regulation 24 of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as "**Intermediaries Regulations, 2008**") to conduct an enquiry against Fairwealth Securities Ltd., Stock Broker (hereinafter referred to as "**Noticee/ Broker/ FSL**") for the following alleged violations by FSL:

- SEBI Circular no. SMD/SED/CIR/93/23321 dated 18 Nov, 1993 and SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
- SEBI Circular SMD/ SED/CIR/ 93/23321 dated November 18, 1993, SEBI Circular SEBI/HO/MIRSD/MIRSD2/ CIR/P /2016/95 dated September 26, 2016, SEBI Circular CIR/HO/ MIRSD /MIRSD2/CIR/P/2017/108 dated September 26, 2017, SEBI Circular CIR/HO/MIRSD/MIRSD2 /CIR/P/2017/124 dated November 30, 2017, SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2018/09 dated January 11, 2018

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सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.
दूरभाष : 2644 9950 / 4045 9950 (आई वी. आर. एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in



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- c) SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular No. SEBI/MRD/Policy/AT/Cir- 19/2004 dated April 21, 2004, SEBI Circular No. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 and SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
- d) Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956
- e) SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
- f) SEBI circular no MIRSD/SE/Cir-19/2009 dated December 03, 2009
- g) SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
- h) Rule 15 of SC(R) Rules, 1957 and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992 and Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016
- i) Regulation 21 of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 and Clause A(5) of Schedule II read with Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992
- j) SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
- k) Section 12(1) of SEBI Act, 1992 read with Rule 8 (1) (f) and 8 (3) (f) of SCRR, 1957
- l) Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011
- m) Clause 2.5 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
- n) Clause 2.5.5 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
- o) Clause A(1) and (5) of the Code of Conduct prescribed for the Stock brokers under the SEBI(Stock Brokers) Regulations, 1992
- p) SEBI Circular no. SMD/SED/CIR/93/23321 dated 18 Nov, 1993 read with SEBI/MRD/SE/Cir- 33/2003/27/08 dated Aug 27, 2003





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- q) SEBI Circular No. SMDRP/Policy/CIR-39/2001 dated July 18, 2001 and Clause A(2) & A(3) of Schedule II read with Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992
- r) Clauses A (1), (2), and (5) of Code of Conduct as specified in Schedule II of Regulation 9 (f) of Stock Broker Regulations, 1992
- s) Section 12A of SEBI Act, 1992 r/w Regulation 3(d), 4(1), 4(2)(f), 4(2) (p) and 4(2)(m) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market), Regulations, 2003
2. The order appointing undersigned as Designated Authority was communicated vide communique dated March 09, 2021. A copy of which is enclosed as **Annexure 1**.
3. The Noticee is registered with SEBI as a stock broker having registration number INZ000186238. It is a member registered with National Stock Exchange of India Ltd. (hereinafter referred to as "NSE"), BSE Ltd. (hereinafter referred to as "BSE") and Metropolitan Stock Exchange of India Ltd. (hereinafter referred to as "MSEI") in Cash Market, Futures & Options and Currency Derivative, segments. FSL is also registered as a Depository Participant (DP) with SEBI registration number IN-DP-CDSL-393-2007 and is a member of CDSL.
4. NSE by its email dated October 04, 2019 informed by way of a preliminary report to SEBI that it had visited the office of FSL on October 01, 2019 after receiving the intelligence from market that the directors of FSL are absconding. On analysis of register of securities of FSL, NSE observed that out of total client securities worth Rs. 103.25 crore, securities amounting to Rs.88 Crore were not available with the Trading Member. Further, FSL appeared to have sold securities worth Rs. 82.15 crore through 5 clients' accounts without these clients owning the securities. NSE during its visit to the office of FSL, also observed that the depository and back office section of FSL were shut down and only two persons of FSL were available in the office.





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5. Considering serious prima-facie violation of various provisions of SEBI Act/Rules/Regulations/Circulars, an ex-parte ad interim order was passed by the WTM, SEBI on October 11, 2019 against FSL and its 13 related entities (promoter/director/group company). A copy of the said ad interim Order is enclosed as **Annexure 2**. Following directions were issued vide aforesaid ad interim order:

(i) All Noticees are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions;

(ii) The aforesaid Noticees shall cease and desist from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever till further directions;

(iii) The aforesaid Noticees are directed not to dispose of or alienate any assets, whether movable or immovable, or to create or invoke or release any interest or charge in any of such assets except with the prior permission of NSE and BSE;

(iv) The aforesaid Noticees are directed to provide a full inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments immediately to NSE and BSE but not later than 5 working days from the date of receipt of this order;

(v) Till further directions in this regard, the assets of the Noticees shall be utilized only for the purpose of payment of money and /or delivery of securities, as the case may be, to the clients/investors under the supervision of the concerned exchanges/depositories;





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(vi) The depositories are directed to ensure that no debits are made in the demat accounts, held jointly or severally, of the aforesaid Noticees except for the purpose mentioned in sub-para (v) above, after confirmation from NSE/BSE;

(vii) The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by the Noticees except for the purpose of payment of money to the clients/investors under the written confirmation of NSE/BSE;

(viii) The stock exchanges shall appoint forensic auditor to track misuse of client's funds/securities and to identify the net assets/liabilities of Noticee no. 1 and submit the report to SEBI within 90 days;

(ix) The stock exchanges shall deal with the complaints/claims of the clients against the member and may return the amount of client fund and securities to the clients and may also use assets of the Noticee no. 1 to meet clients'/exchanges'/clearing members'/clearing corporations', obligations; and

(x) The above directions are without prejudice to the right of SEBI to take any other action that may be initiated in respect of aforesaid entities/persons.

6. It was further directed that the stock exchanges shall appoint Forensic Auditor to track misuse of client's funds/securities and identify the net assets/liabilities position of FSL and submit report to SEBI.

7. In accordance with the direction of the interim order dated November 25, 2019, BSE appointed Forensic Auditors and the Forensic Audit Report (FAR) dated December 22, 2020 was submitted by BSE to SEBI. A copy of the FAR is enclosed as **Annexure 3**. In the meanwhile, considering submission of FSL & other 13 entities, vide order no. WTM/AB/NRO/MIRSD/6519/2019-20 dated January 24, 2020, the WTM, SEBI confirmed





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the directions issued in the aforesaid ad interim order against 12 entities (including the Noticee) and for rest 2 entities namely Roop Lal Aggarwal & Kamla Prasad Shukla directions were repealed. However, it was further directed that if any evidence of violation of securities laws by these abovementioned two entities are found after conclusion of forensic audit directed in the matter and/or other examination/investigation, if any, conducted by SEBI, action against these entities shall follow, in accordance with the law. A copy of the aforesaid Order dated January 24, 2020, is enclosed as **Annexure 4**.

8. The allegations based on the findings of the FAR are as under:

A. Unauthorised trading in clients' account & Misappropriation of Clients' Securities

- i. The trade logs, DP statements of the FSL's clients and the Register of Securities reveal that there were trading in the securities by FSL's 5 group entities in huge volumes particularly during 2019-20. Further, these securities were transferred from various FSL Demat accounts. The scrutiny of the FSL Demat accounts and their transactions reveals that these securities were transferred through the Off-Market transactions from their clients' accounts to the various Demat accounts of FSL.
- ii. The absence of any trading instructions/ contract note for the transaction from their clients in support for such off market transactions in the FSL clients' DP statements, securities being transferred to the FSL's Demat accounts and onwards transfer to 5 FSL group entities substantiates that FSL had transferred clients securities to its accounts without authorisation. Subsequently, FSL had traded these securities without authorisation through various accounts including their 5 group entities viz., M/s Reets Plastics Private Limited, M/s Chahek Housing Pvt Ltd, M/s Aagas Software Solutions Pvt Ltd, Katashraj Securities Pvt Ltd and Shyam Sunder Jolly.





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- iii. It was observed that the number of securities traded were more than what stands in the credit of their respective DP account with CDSL/NSDL. This indicates that the securities traded by FSL are not owned by them. FSL had transferred the securities of their client's account and transferred to its own accounts through off market transaction and thereafter transferred to other accounts including to its own group entities and sold these securities in the market. The negative holding of the securities in these accounts were never invested by the clients/group entities which indicates FSL utilized the securities of other clients to trade.
- iv. The total securities excess sold as per the register of securities (hereinafter referred as "ROS") and the holding statements (CDSL/NSDL), are 1640 which were valued at Rs. 103,19,81,911, belonging to 63 clients, including their 5 group companies.
- v. The detailed findings in this regard are given in Para 6.1, 6.2, 6.24 & 6.25 of FAR.
- vi. In view of the above, it is alleged that FSL has traded client securities without authorization and also misappropriated them. *Therefore, FSL has violated SEBI Circular SMD/SED/CIR/ 93/23321 dated November 18, 1993, SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P /2016/95 dated September 26, 2016, SEBI Circular CIR/HO/ MIRSD /MIRSD2/CIR/P/2017/108 dated September 26, 2017, SEBI Circular CIR/HO/MIRSD/MIRSD2 /CIR/P/2017/124 dated November 30, 2017, SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2018/09 dated January 11, 2018.*

B. Unavailability of securities

- i. Register of Securities (ROS) of FSL back office as on October 03, 2019 was compared with Demat account statements of FSL and the total value of securities available with FSL as per the FSL back office records are amounting to Rs.1,05,13,22,497.68 and the value of securities actually held in their demat account of CDSL, amounts to Rs. 15, 10,48,996.43 resulting in unavailability of securities worth Rs. 90,02,73,501.25 and the periodic stock





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reconciliation was not maintained. The detailed findings in this regard are given in Para 6.3 of FAR.

- ii. In view of the aforesaid, it is alleged that client securities have been misappropriated and shortfall of clients' securities is around Rs. 90 Crore. *Therefore, FSL has violated SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular No SEBI/MRD/Policy/AT/Cir- 19/2004 dated April 21, 2004, SEBI Circular No. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 and SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016*

C. Unauthorised Off-Market Transactions in the clients' accounts

- i. It was observed from Demat account statements of the FSL that there were certain off-market share transfer transactions during the period 2016-17 to 2019-20. On further analysis of these off-market transactions and their onwards/backward transaction trail, it was observed that these Off Market transactions were carried out only to transfer securities to the FSL, its group company Fairwealth Financial Services Ltd. (FFSL) and its other related entities. These Off-Market transactions were done by FSL without the knowledge or permission of the respective clients, Which indicates, FSL had allegedly transferred the clients' securities to its group/related entities without authorisation.
- ii. FSL had carried out the Off-Market transactions as per their Demat accounts, and these transfers were made to FFSL, which is a NBFC and related company. It was further observed that there were no formal agreement/POA between the two entities i.e., FFSL and FSL for such transactions. During the visit to the FSL back office, director of the FSL failed to submit/produce any documentary evidences in support of such Off-Market transactions between the said two entities. There were no clients contract notes that are made available at the FSL back office, for the verification of the off market transactions carried out in the clients' demat accounts. The detailed findings in this regard are given in Para 6.4 of FAR.





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iii. In view of the above, for dealing in shares of the company through off market transfers without consideration, FSL is in violation of Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956.

D. Unauthorized Pledging of client securities

- i. It was observed that FSL's client securities were transferred from their respective demat accounts to the FSL, its related entities initially and subsequently transferred to FSL broker-client account. Once these are transferred to the FSL's broker-client accounts, identifying the individual client's securities is difficult as all the securities now are transferred to TM accounts and from there these securities were used in pledging the securities for obtaining the loans/facilities or used in providing as margin for trading.
- ii. FSL had pledged clients' securities with various NBFCs/ Banks/ FIs viz. Kotak Mahindra Bank, HDFC Bank, ECL Finance Limited, Aditya Birla Finance Ltd, IIFL Wealth Ltd, Globe Fin Cap Ltd, ILFS Financial Services Ltd and Edelweiss Custodian Services Ltd. and availed overdraft/LAS facility with them. FSL client securities were pledged by its group entity with ECL Finance Ltd for raising the funds which were transferred to its group company's suspected bank account. The funds so raised were transferred to Kotak Bank A/c No. 09582540006005, this account is not in the books of accounts (Trial Balance) of FSL for all the three years of the account. Unauthorized transferred securities to FSL by FSL were pledged to financial institutes like ECL Finance Ltd etc. and raised funds by FSL.
- iii. FSL pledged securities of its debit and credit balance clients in excess of their obligations, without authorization. The total excess pledge of securities by FSL as on 31.12.2017, 31.03.2018, 30.06.2018 and 31.01.2019 are Rs. 61.92 Crore, Rs. 35.06 Crore, Rs. 40.57 Crore and Rs. 15.25 Crore respectively. This indicates that FSL had been pledging





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securities of its debit and credit balance clients in excess of the obligation in substantial amounts. A stock broker has no authority to pledge the securities of its fully paid clients, if the stock broker pledges securities of the fully paid clients, it amounts to misappropriation of clients securities by the stock broker. The detailed findings in this regard are given in Para 6.5- 6.10 of 'FAR'.

- iv. Observation in respect of analysis of bank account of FSL- Despite repeated mails, telephonic conversation with FSL director Mr. Dhirender Gaba, the data regarding complete details of the bank accounts, deeds of properties, details of the client wise securities pledged and the details of the transactions of the group companies were not provided by FSL. Apart from the findings stated in forensic audit report and in order to ascertain the transaction vis-a-vis securities movement of clients certain bank accounts statement were obtained from banks. In relation to the same, it was observed FSL had raised funds by way of pledging securities with NBFCs/financial institutions/banks viz. Aditya Birla Finance Ltd, IL & FS Financial Services Limited, ECL Finance Limited, Kotak Mahindra Bank Ltd, IIFL Wealth Finance Limited, HDFC Bank Ltd, and Globe Fincap Limited. The transaction between NBFCs and FSL's two major accounts (A/c. no. 01722650000184, 9511123079) are tabulated below:

Sl. No.	Movement of funds between accounts	Period	Amount (Rs.)
1.	ECL Finance Ltd to FSL(A/c. no. 0184)	29/09/2017-25/09/2019	60,25,50,000
	FSL(A/c. no. 0184) to ECL Finance Ltd	04/10/2017-25/09/2019	47,63,10,060
2.	Aditya Birla Finance Ltd to FSL(A/c. no. 0184)	---	---
	FSL(A/c. no. 0184) to Aditya Birla Finance Ltd.	11/05/2016-31/07/2018	9,54,73,889
3.	IL & FS Financial Services Limited to FSL(A/c. no. 0184)	17/05/2016-15/12/2016	90,324
	FSL(A/c. no. 0184) to IL & FS Financial Services Limited	11/05/2016-31/07/2018	9,54,73,889





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4.	IIFL Wealth Finance Limited to FSL(A/c. no. 0184)	27/03/2017-25/05/2017	4,40,00,000
	FSL(A/c. no. 0184) to IIFL Wealth Finance Limited	06/05/2017-28/06/2018	4,66,86,907
5.	Globe Fincap Ltd. to FSL(A/c. no. 0184)	31/05/2018	9,320
	Globe Fincap Ltd. to FSL(A/c. no. 3079)	25/04/2017-18/05/2017	6,50,00,000
	FSL(A/c. no. 0184) to Globe Fincap Ltd	16/05/2017-02/11/2018	2,51,02,000

- v. As per forensic audit FSL had pledged securities with the abovementioned NBFCs of its debit and credit balance clients' excess of their obligation and misappropriated.
- vi. In view of the above, it is alleged that FSL pledged clients' securities without authorisation. *Therefore, FSL has violated SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.*

E. Non Settlement of clients' account

- i. As per the data taken from the back office of the FSL, the forensic auditor was provided data for only 2 quarters of FY 2019-20 by the broker. Accordingly, the auditor prepared the list of the client wise funds and securities which were not settled for two quarters of 2019-20. It was observed that the amount of client's funds which were not settled is Rs. 3.65 crores and amount of securities not settled of clients is Rs. 20.09 crores for Q1 & Q2. The detailed findings in this regard are given in Para 6.11 of 'FAR'.
- ii. *In view of the above, it is alleged that FSL has failed to settle funds and securities of clients and violated SEBI Circular no. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.*





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F. Mis-utilization of funds for own purposes/debit balance clients

- i. As per principle laid down under SEBI circular dated 26.09.2016 for calculation of shortfall of funds is calculated as on 01.10.2019, the calculation which is based on the data available in the books of accounts and received from the exchanges, FSL has misutilized clients' funds to the tune of Rs. 52.3 Crore. Out of which Rs. 25.05 Crore used for debit balance clients and Rs 27.24 Crore used for own purpose. Hence, total shortfall of funds is Rs. 52.3 Crore. The detailed findings in this regard are given in Para 6.12 of 'FAR'.
- ii. Diverted funds to own/ repay loans for several properties and for Cars: FSL had raised 'Loans against Property' from different banks, the utilization of the funds raised from these loans could not be verified in the absence of the records being submitted by FSL. However, the loans are repaid out of the funds generated from the FSL's trading business. Hence these repayment of loans, funds utilized for acquiring these Cars are considered as diversion/ siphoning of the FSL funds by the directors of the company. The detailed findings in this regard are given in Para 6.16 of 'FAR'.
- iii. In view of the above, it is alleged that FSL has misused/diverted client funds and sufficient funds are not available to settle credit balance clients. *Therefore, FSL has violated SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.*

G. Misrepresented books of accounts and incorrect Net worth Certificate Submitted to Exchange

- i. It was observed that FSL had mis-represented the net worth in the certificate submitted to exchanges as on 31.03.2018, the long outstanding debtors (i.e., more than 90 days), the value of the fixed assets, pledged securities, non-allowable securities and 30% of the





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marketable securities were not considered while calculating the net worth as per the SEBI guidelines.

- ii. The Fixed Assets schedule of the Audited Balance Sheet is incorrect, as the schedule does not contain the properties and cars owned by the FSL. FSL was owning almost several cars and properties but these were not declared in the Asset Schedule of the Audited Balance Sheets, and there are several loans against these cars. The value of these assets was not reduced from the Networth Calculation of FSL.
- iii. Securities are pledged with ECL Finance Ltd, Kotak Mahindra Bank and HDFC Bank, Global Finance Ltd against the pledge of shares during the period from 2016-17 till 2019-20. However, the value of these pledged securities which are to be reduced for the calculation of Networth were not considered. Networth submitted by FSL as on 31.03.2018 was incorrectly shown as Rs. 12 Crore and it was negative Rs. 13 crore.
- iv. The detailed findings in this regard are given in Para 6.13 of 'FAR'.
- v. *In view of the aforesaid, it is alleged that FSL has misrepresented and failed to maintain proper books of accounts and has violated Rule 15 of SC(R) Rules 1957 and Regulation 17 of the SEBI (Stock-Brokers) Regulations, 1992. Further, FSL has also violated Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016 as it submitted incorrect/wrong data to exchange.*

H. Failure to furnish documents to exchange/auditor-Non cooperation

- i. Upon scrutiny of the books of accounts by the forensic auditor, it was observed that there were huge payments and receipts to/from the group entities which are not in the trading activity. However, the bank statements of all the accounts of FSL from 2016-17 are not available and also the bank statements of these group entities are not available for the period





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from 2016-17 to 2019-20, hence the exact amount paid and received could not be verified in the bank accounts.

- ii. In the absence of complete records/documentary evidenced the forensic auditor had to rely on the available books of accounts and other information and the Forensic Audit Report is prepared based on the information & data made available for the purpose of the Forensic Audit and information on the public domain, hence the audit findings are limited to the data made available for the purpose of Audit.
- iii. Inspite of repeated mails, telephonic conversations and personal requests at the time of Forensic Audit team with FSL director Mr. Dhirender Gaba at the Gurgaon office premises of FSL, the auditor could not receive complete details of the bank accounts, deeds of properties, details of the client wise securities pledged and the details of the transactions of the group companies.
- iv. The detailed findings in this regard are given in Para 6.14, 6.16 & 7 of 'FAR'.
- v. *In view of the above, it was observed that FSL didn't provide required information/documents to auditor. Hence, FSL is in violation of Regulation 21 of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 and Clause A(5) of Schedule II read with Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992.*

I. Related party transactions

- i. As per books of accounts/bank ledgers, the payments to the present and past directors were analysed. The details of the payments to the present and past directors in the last four Financial Years, i.e., 2016-17 to 2019-20 are as follows. Based on the table below, huge fund transfers were observed from the present directors of FSL viz., Mr. Dhirender Gaba, Mr. Naveen Gaba.





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Year	31-03-2017		31-03-2018		31-03-2019		01-10-2020	
Directors	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit
DHIRENDER GABA	1,67,56,717	1,86,99,840	16,99,76,799	16,99,97,091	16,22,78,024	17,43,52,689	9,04,10,883	12,90,43,202
NAVFEN GABA	15,95,227	15,73,981	1,09,80,807	1,10,18,982	61,40,006	1,01,07,424	4,63,92,933	7,81,12,932
SHRIPAD SADANAND DESAI	19,000	19,448	7,196	6,731	1,69,405	1,69,405	52,768	55,330
Past Directors								
AMIT GUPTA	1,93,950	2,02,174	38,488	30,057	5	38	77,712	76,546
ANIL DIXIT	856	856	-	-	-	-	29,000	29,000
KAMLA PRASAD SHUKLA	21,170	20,010	11,128	10,000	-	0	17,516	17,516
RAHUL YADAV	573	-	288	-	4,020	-	8,25,045	45
ROOP LAL AGARWAL	1,51,903	1,51,903	-	-	-	-	1,50,000	1,50,000
SHITLA PRASAD SHUKLA	2,29,931	2,29,931	36,273	35,278	7,41,841	7,27,672	4,45,636	4,14,744
SHYAM SUNDER JOLLY	17,47,56,020	11,44,22,865	8,98,41,615	15,18,64,892	25,65,674	63,53,600	3,39,26,560	3,77,11,811
VIKRAM KUMAR	56,77,128	56,54,643	1,05,57,298	1,05,63,140	10,64,607	10,30,408	27,23,003	27,19,451
SANDEEP JINDAL	-	-	-	-	-	-	-	-

- ii. The total payments to Mr. Dhirender Gaba account in last four years is Rs. 4,44,21,523 and total receipts was Rs. 4,90,92,832 with net receipts of Rs. 46,71,309 the total payments to Mr. Naveen Gaba are Rs. 6,51, 08,973 and total receipts from his account in the last four years are Rs. 10,08,13,319, net receipt of Rs. 3,57,04,346.
- iii. The total payments/receipts to the past directors are high in case of Mr. Shyam Sunder Jolly and Mr. Vikram Kumar. The total payments to Mr. Shyam Sunder Jolly are Rs. 30,10,89,869 and total receipts from his account are Rs. 30,93,53,268, net receipts of Rs. 82,63,399. The total payments to past Director Mr. Vikram Kumar is Rs. 2,00,22,036 and total receipts are Rs. 2,00,05,396.





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- iv. There were huge payments and receipts to/from the group entities which are not in the trading activity. M/s Fairwealth Financial Services Ltd does not have UCC allotted i.e. it is not registered for trading activity through FSL. In spite of this, FSL made a total payments of Rs 37,69,48,551 and total receipts of Rs 61,26,74,478. The FSL client securities were pledged through this account to ECL Finance Ltd. M/s Vanshi Builtech Pvt Ltd, in which Mr. Sandeep Jindal is one of the common directors, is not registered for the trading activity with FSL, but there are payments of Rs 1,31,50,000 and receipts for Rs 92,00,000. Another major group entity M/s Fairwealth Agencies Pvt Ltd, which is registered for trading activity with FSL had several transactions with FSL. Total debits to this company is Rs 7,12,65,188 and total credit transactions of Rs 2,29,82,183.
- v. The detailed findings in this regard are given in Para 6.15 of 'FAR'.
- vi. In view of the above, it is alleged that FSL was engaged in business other than securities and also misused clients' funds/securities. *Thus, FSL has violated Section 12(1) of SEBI Act, 1992 read with Rule 8 (1) (f) and 8 (3) (f) of SCRR, 1957.*

J. Discrepancies in Email ids and Mobile numbers data of clients

- i. During the examination of UCC data, it is observed that out of the total 67,833 clients, there are 2588 instances where clients' mobile numbers are not entered and 592 instances where the mobile number and email Ids are not mentioned.
- ii. There are 1572 clients not covered under the definition of "Family" as per SEBI regulations, have common contact numbers and having common email address registered with the exchanges against each of different clients. These clients were active clients who traded with FSL. However, the details of their contact numbers, email address were intentionally manipulated by FSL. The detailed findings in this regard are given in Para 6.20 of 'FAR'.





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iii. *In view of the above, FSL has not complied with Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.*

K. FSL purchased securities in un-registered client code

- i. It was observed that from FY 2016-19, FSL under the client code “NSE” purchased 12,00,837 quantity of securities. However, no sale transactions were observed. Further, client code “NSE” was not found in the UCC data. The detailed findings in this regard are given in Para 6.22 of ‘FAR’.
- ii. *By dealing in unregistered client code, FSL is in violation of SEBI Circular No. SMDRP/Policy/CIR-39/2001 dated July 18, 2001 and Clause A (2) & A (3) of Schedule II read with Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992.*

L. Client’s securities pledged from other than client’s accounts

- i. FSL had raised funds from ECL Finance Limited by pledging of clients’ securities and funds credited to other bank account. FSL had pledged client’s securities through its group company, mainly from M/s Fairwealth Financial Services Ltd (FFSL), account no “1204910000117737”, which is an NBFC company. The detailed findings in this regard are given in Para 6.23 of ‘FAR’.
- ii. *In view of the above, it is alleged that FSL has violated the provisions of Clause 2.5 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.*

M. Details of client’s securities pledged not sent to the clients





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- i. As per SEBI Regulations, Stock Brokers are required to send a statement reflecting the pledge and funding to the clients. FSL had not sent the details of the securities pledged to their clients. The detailed findings in this regard are given in Para 6.23 of 'FAR'.
- ii. *In view of the above, it is alleged that FSL has violated the provisions of Clause 2.5.5 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.*

N. Cash transactions

- i. From the bank account statement of FSL (A/c. no. 01722650000184 held with Kotak Bank) it is reflected that during period of examination huge amount of cash withdrawal and cash deposit was made by FSL and details are tabulated below:

Particular	Amount (Rs.)	Period
Cash withdrawal	1,00,78,908	13/04/2016- 21/09/2019
Cash deposit	43,32,500	27/04/2016- 24/11/2016

Year wise cash withdrawal:

Year	Amount (Rs.)
2016	20,50,100
2017	23,19,352
2018	32,79,056
2019	24,30,400

- ii. It is seen that major amount of withdrawal happened between year 2017-2019 when the broker misused clients' securities by way of pledging and selling through other accounts. Further, it is also alleged that clients' money had been withdrawn by the broker on regular basis and used for other purposes.





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iii. In view of the above, it is alleged that FSL has failed to maintain fairness and integrity in all its business. Therefore, FSL has violated clause A (1) and A (5) of the Code of Conduct prescribed for the Stock brokers under the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992

O. Salary paid to employees from client account

- i. Upon analysing of client account (Account No. : 06782320000947) held with HDFC bank, it was observed that from that account salary was paid to employees of FSL.
- ii. From the above, it is alleged that FSL has paid salary to its employees from clients' account. Therefore, FSL has violated SEBI Circular no. SMD/SED/CIR/93/23321 dated 18 Nov, 1993 read with SEBI/MRD/SE/Cir- 33/2003/27/08 dated Aug 27, 2003.

9. In view of the allegations as stated above in para A to O, FSL is also alleged to have violated Clauses A(1), A(2) & A(5) of Code of Conduct as provided under Schedule II read with Regulation 9 of the SEBI (Stock Brokers) Regulations, 1992. Further, FSL is also alleged to have violated Section 12A of SEBI Act, 1992 r/w Regulation 3(d), 4(1), 4(2)(f), 4(2)(p) and 4(2)(m) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market), Regulations, 2003.

10. The relevant provisions of law are reproduced below:

Securities Contracts (Regulation) Act, 1956

Definitions

2. In this Act, unless the context otherwise requires,—

(i) "spot delivery contract" means a contract which provides for,—

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the





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securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;]

Contracts in notified areas illegal in certain circumstances.

13. If the Central Government⁷³ is satisfied, having regard to the nature or the volume of transactions in securities in any ⁷⁴[State or States or area] that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such ⁷⁵[State or States or area], and thereupon every contract in such ⁷⁶[State or States or area] which is entered into after the date of the notification otherwise than ⁷⁷[between members of a recognised stock exchange or recognised stock exchanges] in such ⁷⁸[State or States or area] or through or with such member shall be illegal :

79[Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall—

(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;

(ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.]

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government⁸⁴ is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also





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specify the manner in which, and the extent to which, the provisions of that section shall so apply.

Securities and Exchange Board of India Act, 1992

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

12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the 53[regulations] made under this Act:

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

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

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or





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contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.]

Securities Contracts (Regulation) Rules, 1957

Qualifications for membership of a recognised stock exchange.

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

(1)No person shall be eligible to be elected as a member if—

.....

.....

(f)he is engaged as principal or employee in any business other than that of securities⁸[or commodity derivatives] except as a broker or agent not involving any personal financial liability unless he undertakes on admission to sever his connection with such business :

*9[***]*





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10[Provided that nothing herein shall be applicable to any corporations, bodies corporate, companies or institutions referred to in clauses (a) to (n) of sub-rule (8).]

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

.....

.....

(f)he engages either as principal or employee in any business other than that of securities¹⁴[or commodity derivatives] except as a broker or agent not involving any personal financial liability, provided that—

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

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

15[(iii)nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items [(a) to (n)] of sub-rule (8)]¹⁶.

Books of account and other documents to be maintained and preserved by every member of a recognised stock exchange.

15.(1) Every member of a recognised stock exchange shall maintain and preserve the following books of account and documents for a period of five years :

(a)Register of transactions (Sauda book).

(b)Clients' ledger.

(c)General ledger.

(d)Journals.





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(e) Cash book.

(f) Bank pass-book.

(g) Documents register showing full particulars of shares and securities received and delivered.

(2) Every member of a recognised stock exchange shall maintain and preserve the following documents for a period of two years:

(a) Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members.

(b) Counterfoils or duplicates of contract notes issued to clients.

(c) Written consent of clients in respect of contracts entered into as principals.

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a 3[manipulative,] fraudulent or an unfair trade practice in securities 4[markets]. 5[Explanation.—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been





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considered as manipulative, fraudulent and an unfair trade practice in the securities market.]

(2) Dealing in securities shall be deemed to be a 6[manipulative] fraudulent or a nunfair trade practice if it involves 7[any of the following]:—

(f) 12[knowingly] publishing or causing to publish or reporting or causing to report by a person dealing in securities any information 13[relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals,] which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(m) 19[a market participant entering into transactions on behalf of client without the knowledge of or instructions from client or misutilizing or diverting the funds or securities of the client held in fiduciary capacity"];

(p) an intermediary predating or otherwise falsifying records 22[including contract notes, client instructions, balance of securities statement, client account statements];

SEBI (Stock Brokers and Sub-brokers) Regulations, 1992

Conditions of registration.

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

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

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers 93[)***

Regulations, 1992

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

A. General.

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





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

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

.....

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

To maintain proper books of account, records, etc.

17. (1) *Every Stock Broker shall keep and maintain the following books of account, records and documents, namely:—*

(a) *Register of transactions (Sauda Book); (b) Clients ledger; (c) General ledger;(d) Journals;(e) Cash book;(f) Bank pass book;41[(g) Documents register containing, inter alia, particulars of securities received and delivered in physical form and the statement of account and other records relating to receipt and delivery of securities provided by the depository participants in respect of dematerialized securities;](h) Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members;(i) Counterfoils or duplicates of contract notes issued to clients;(j) Written consent of clients in respect of contracts entered into as principals;(k) Margin deposit book;(l) 42[****](m) 43[****] 44[(n) Client account opening form in the format as may be specified by the Board.]*

Obligations of stock-broker on inspection by the Board.

21. (1) *It shall be the duty of every director, proprietor, partner, officer and employee of the stock-broker, who is being inspected, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to the transactions in securities market within such time as the said officer may require.*

(2) *The stock-broker shall allow the inspecting authority to have reasonable access to the premises occupied by such stock-broker or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the stock-broker or any other person and also provide copies of documents or other materials which, in the opinion of the inspecting authority are relevant.*





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(3) The inspecting authority, in the course of inspection, shall be entitled to examine or record statements of any member, director, partner, proprietor and employee of the stock-broker.

(4) It shall be the duty of every director, proprietor, partner, officer and employee of the stock broker to give to the inspecting authority all assistance in connection with the inspection, which the stock broker may reasonably be expected to give.

Appointment of auditor.

24. Notwithstanding anything contained above, the Board may appoint a qualified auditor to investigate into the books of account or the affairs of the stock-broker:

Provided that, the auditor so appointed shall have the same powers of the inspecting authority as mentioned in regulation 19 and the obligations of the stockbroker in regulation 21 shall be applicable to the investigation under this regulation.

SEBI Circular no. SMD/SED/CIR/93/23321 dated 18 Nov, 1993

Regulation of Transactions between Clients and Brokers

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

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

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

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

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





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CJ What moneys to be paid into "clients account". No money shall be paid into clients account other than –

- i. money held or received on account of clients;*
- ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;*
- iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;*
- iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.*

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

- i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;*
- ii. such money belonging to the Member as may have been paid into the client account under para 1C[ii] or 1C[iv] given above;*
- iii. money which may by mistake or accident have been paid into such account in contravention of para C above.*

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

2. It shall be compulsory for all Member brokers to keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities. Such accounts for client's securities shall, inter-alia provide for the following:-

- a. Securities received for sale or kept pending delivery in the market;*
- b. Securities fully paid for, pending delivery to clients;*
- c. Securities received for transfer or sent for transfer by the Member, in the name of client or his nominee(s);*
- d. Securities that are fully paid for and are held in custody by the Member as security/margin etc. Proper authorization from client for the same shall be obtained by Member;*
- e. Fully paid for client's securities registered in the name of Member, if any, towards margin requirements etc.;*
- f. Securities given on Vyaj-badla. Member shall obtain authorization from clients for the same.*





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3. Member Brokers shall make payment to their clients or deliver the securities purchased within two working days of pay-out unless the client has requested otherwise. Stock Exchange shall issue a Press Release immediately after the pay-out.

4. Member Brokers shall buy securities on behalf of client only on receipt of margin of minimum 20 percent on the price of the securities proposed to be purchased, unless the client already has an equivalent credit with the broker. Member may not, if they so desire, collect such a margin from Financial Institutions, Mutual Funds and FII's.

5. Member brokers shall sell securities on behalf of client only on receipt of a minimum margin of 20 percent on the price of securities proposed to be sold, unless the member has received the securities to be sold with valid transfer documents to his satisfaction prior to such sale. Member may not, if they so desire, collect such a margin from Financial Institutions, Mutual Funds and FII's.

6. Member brokers shall issue the contract note for purchase/sale of securities to a client within 24 hours of the execution of the contract.

7. In case of purchases on behalf of clients, Member brokers shall be at liberty to close out the transactions by selling the securities, in case the client fails to make the full payment to the Member Broker for the execution of the contract within two days of contract note having been delivered for cash shares and seven days for specified shares or before pay-in day (as fixed by Stock Exchange for the concerned settlement period), whichever is earlier; unless the client already has an equivalent credit with the Member. The loss incurred in this regard, if any, will be met from the margin money of that client.

8. In case of sales on behalf of clients, Member broker shall be at liberty to close out the contract by effecting purchases if the client fails to deliver the securities sold with valid transfer documents within 48 hours of the contract note having been delivered or before delivery day (as fixed by Stock Exchange authorities for the concerned settlement period), whichever is earlier. Loss on the transaction, if any, will be deductible from the margin money of that client.

SEBI Circular CIR/HO/ MIRSD /MIRSD2/CIR/P/2017/108 dated September 26, 2017

Prevention of Unauthorised Trading by Stock Brokers

I. SEBI in the past has taken several steps to tackle the menace of "Unauthorized Trades" viz Periodic Running Account Settlement, Post transactions SMS/email by exchanges/Depositories, Ticker on broker/DP websites etc. It was observed that in spite of measures taken, a considerable proportion of investor complaints is of the nature of "Unauthorized Trades".

II. The current regulatory requirements in commodity derivative markets require that "The members shall execute the trade of clients only after keeping evidence of the client placing





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such order; it could be, inter alia, in the form of sound recording."There are no such requirements in Equity, Equity Derivative and Currency Derivative Market side.

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

a. Physical record written & signed by client,

b. Telephone recording,

c. Email from authorized email id,

d. Log for internet transactions,

e. Record of SMS messages,

f. Any other legally verifiable record. When dispute arises, the burden of proof will be on the broker to produce the above records for the disputed trades.

IV.Further, wherever the order instructions are received from clients through the telephone, the stock broker shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records.

SEBI Circular CIR/HO/MIRSD/MIRSD2 /CIR/P/2017/124 dated November 30, 2017

1.SEBI vide circular no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 has inter-alia specified that brokers shall execute trades of clients only after keeping evidence of the client placing such order. Further, SEBI has made it mandatory to use telephone recording system to record client instructions and maintain telephone recordings wherever the order instructions are received from clients through the telephone.

2.Subsequently, SEBI has received representations from stock brokers and their associations expressing operational difficulties caused to stock brokers. Accordingly, in view of operational difficulties faced by stock brokers, it has been decided as under.

i.Brokers are required to maintain the records specified at para III of aforementioned circular for a minimum period for which the arbitration accepts investor complaints as notified from time to time, currently three years. However in cases where dispute has been raised, such records shall be kept till final resolution of the dispute.

ii.If SEBI desires that specific records be preserved then such records shall be kept till further intimation by SEBI.

iii.The above mentioned SEBI circular also prescribes that 'when dispute arises, the burden of proof will be on the broker to produce the above records for the disputed trades'.





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However for exceptional cases such as technical failure etc. where broker fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt/payment of funds/securities by client in respect of disputed trade, etc. shall also be considered.

SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2018/09 dated January 11, 2018

Prevention of Unauthorised Trading by Stock Brokers

1. SEBI vide circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017 had prescribed guidelines for prevention of unauthorised trading by stock brokers and issued subsequent clarification vide CIR/HO/MIRSD/MIRSD2/CIR/P/2017/124 dated November 30, 2017.

2. SEBI has now received representations from BSE Brokers Forum and Association of National Exchanges Members of India, expressing difficulties faced by stock brokers in the implementation of the aforesaid circulars and seeking extension for the implementation of the same.

3. In view of the above, it has been decided to make the aforesaid circulars effective from April 01, 2018. Other provisions shall remain unchanged and no further extension shall be granted for the implementation of the said circulars.

11. Further, relevant provisions pertaining to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, SEBI Circular No. SEBI/MRD/Policy/AT/Cir- 19/2004 dated April 21, 2004, SEBI Circular No. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008, SEBI circular no MIRSD/SE/Cir-19/2009 dated December 03, 2009, SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011, SEBI/MRD/SE/Cir- 33/2003/27/08 dated Aug 27, 2003 and SEBI Circular No. SMDRP/Policy/CIR-39/2001 dated July 18, 2001 can be found at the below mentioned link:
<https://www.sebi.gov.in/legal/circulars/sep-2016/enhanced-supervision-of-stock-brokers-and-depository-participants-33334.html>

<https://www.sebi.gov.in/legal/circulars/apr-2004/settlement-of-transactions-in-holidays-stock-exchanges-and-depositories-12551.html>





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https://www.sebi.gov.in/legal/circulars/apr-2008/collateral-deposited-by-clients-with-brokers_6922.html

https://www.sebi.gov.in/legal/circulars/dec-2009/dealings-between-a-client-and-a-stock-broker-trading-members-included_2891.html

https://www.sebi.gov.in/legal/circulars/aug-2011/sms-and-e-mail-alerts-to-investors-by-stock-exchanges_20373.html

https://www.sebi.gov.in/legal/circulars/aug-2003/circular-mode-of-payment-and-delivery_15954.html

https://www.sebi.gov.in/legal/circulars/jul-2001/unique-client-code_17979.html

12. In view of the above, Noticee is required to show cause as to why suitable action should not be recommended against the Noticee in accordance with Regulations 25, 26 and 27 of Intermediaries Regulations, 2008. The relevant text of the said provisions are reproduced below:

Relevant provisions of SEBI(Intermediaries) Regulations, 2008

9[Holding of enquiry]

25.(1) The designated authority shall issue a notice to a person against whom an enquiry has been initiated, to show cause as to why the action, as contemplated against such person should not be recommended.

(2) The noticee shall be called upon to submit, within a period to be specified in the notice, not exceeding twenty-one days from the date of service thereof, a written reply to the notice, along with documentary evidence, if any, in support of such written reply:

Provided that the designated authority may extend the time specified in the notice for sufficient grounds shown by the noticee and after recording reasons in writing.

(3) Every notice issued under sub-regulation (1) shall specify the contravention alleged to have been committed by the noticee by indicating the provisions of the securities laws or the direction or the order of the Board alleged to have been contravened.

(4) There shall be annexed to the notice issued under sub-regulation (1), copies of documents relied upon by the Board along with the extracts of relevant portions of the reports containing the findings arrived at in an inquiry, investigation or inspection, if any.





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(5) If the noticee demands inspection of such documents within the period specified in sub-regulation (2) and the designated authority is of the opinion that the same may be granted, then the designated authority may issue or cause to issue a notice fixing a date for inspection of documents:

Provided that the date for inspection of documents shall be within thirty days from the date of receipt of such request.

(6) The designated authority shall grant an opportunity of personal hearing and issue or cause to issue a notice scheduling a date for hearing the noticee:

Provided that no opportunity of personal hearing may be granted in the cases where the noticee is alleged to have failed to pay the registration fee or any other applicable fees to the Board as per the provisions of the relevant regulations or the noticee has been declared a wilful defaulter or a fugitive economic offender.

(7) If the noticee does not reply to the notice issued under sub-regulation (1) or fails to appear on the scheduled date of hearing and the designated authority is satisfied that sufficient opportunity has been given to the noticee, the designated authority may conclude the proceedings after recording the reasons for doing so, on the basis of the material available on record.]

10/Recommendation of action

26. (1) After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures,—

- (i) disposing of the proceedings without any adverse action;
- (ii) cancellation of the certificate of registration;
- (iii) suspension of the certificate of registration for a specified period;
- (iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;
- (v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;
- (vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;
- (vii) issuance of a regulatory censure to the noticee:

Provided that in respect of the same certificate of registration, not more than five regulatory censures under these regulations may be recommended to be issued, thereafter, the action as detailed in clause (ii) to (vi) of this sub-regulation may be considered.

(2) The designated authority shall endeavour to submit the report within one hundred and twenty days from the date of receipt of reply to the notice or date of personal hearing, whichever is later.]

11/Order

27. (1) On receipt of the report containing the measures recommended by the designated authority, the designated member shall cause to forward a copy of the report submitted by the designated authority and call upon the notice to make its submission, in writing, as





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to why the measures recommended by the designated authority or any other action as contemplated in these regulations, should not be taken.

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

Provided that upon the request of the noticee, the designated member, after recording reasons, in writing may cause to extend the time specified for submitting reply to the notice.

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

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

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

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

13. Noticee reply, if any, should reach the undersigned, at the address given below as well as through email at “prasantam@sebi.gov.in” and “gauravd@sebi.gov.in” in MS Word/ MS Excel Format, within 21 days from the date of the receipt of this notice, failing which it shall be presumed that the Noticee has no reply to submit and the matter would be further proceeded ex- parte. You may also indicate whether you desire a personal hearing in the matter.

Securities and Exchange Board of India
4th Floor, Plot No. C-7, 'G' Block,
Bandra- Kurla Complex,
Bandra (E), Mumbai– 400 051





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14. Noticee is advised to provide copy of Noticee PAN and email id and also to keep the undersigned informed about the change in Noticee correspondence address, if any, till the proceedings are complete.

Prasanta Mahapatra
Designated Authority



Enclosures:

Annexure 1- Copy of the communique dated March 09, 2021

Annexure 2- Copy of the ad interim Order October 11, 2019

Annexure 3- Copy of Forensic Audit Report

Annexure 4- Copy of the WTM Order dated January 24, 2020