

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 in respect of Fairwealth Commodity Broking Pvt. Limited, a registered intermediary of SEBI.

1. Background

1.1. Fairwealth Commodity Broking Pvt. Limited ("**FCBL**") is registered with SEBI as a commodity derivatives broker with the registration number, INZ000033733 and is a member of Multi Commodity Exchange of India Ltd. ("**MCX**") and National Commodity and Derivatives Exchange Limited ("**NCDEX**").

1.2. The present matter, which is in respect of FCBL, emanates from the findings/observations in respect of the inspection carried out by SEBI of FCBL during the period, April 01, 2017 to December 20, 2018 ("**SEBI Inspection Report**").

1.3. The SEBI Inspection Report *inter-alia* brought out the following findings in respect of FCBL—

- a. failure to segregate client funds from own funds;
- b. misuse of clients' funds;
- c. non-settlement of clients' funds;
- d. non-production of enhanced supervision data;

- e. non-adherence to stipulated client registration process (KYC and KRA process); and
- f. uploading of incorrect mobile number and email ID in UCC database.

2. Enquiry Proceedings against FCBL

2.1. Consequent to the observations made in the SEBI Inspection Report, Enquiry Proceedings were initiated against FCBL, a registered intermediary, in terms of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**"), by appointing a Designated Authority ("**DA**") in the matter.

2.2. Pursuant to the said appointment, the DA issued a Show-cause Notice dated September 29, 2021, with the documents relied upon including the Forensic Audit Report dated December 22, 2020 submitted to SEBI by BSE on the working of Fairwealth Securities Limited ("**FAR**") and the SEBI Inspection Report ("**SCN**"). The SCN alleged that FCBL had violated the following provisions of law –

- SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008
- 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.
- SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009
- Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
- SEBI Master circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/87 dated June 01, 2018 and SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011

- Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011
- Clauses A (1), (2), and (5) of Code of Conduct as specified in Schedule II of Regulation 9 (f) of Stock Broker Regulations, 1992

2.3. It is noted that the SCN was sent by SPAD to the address of the Noticee as provided by it to SEBI: A-312 to A-323, 3rd Floor, Somdutt Chamber-I, Bhikaji Cama Place, New Delhi - 110066. The SCN returned to SEBI undelivered. The SCN was also emailed to the email ID: compliance@fairwealth.in, however the said mail bounced back. Subsequently, a notice was published in the Hindustan Times' Delhi edition of April 22, 2022 (English daily), notifying the Noticee of the SCN issued to it, with the intimation that an opportunity of personal hearing had been scheduled before the DA for May 13, 2022. A similar notice, containing the above-mentioned details, were also published in the Hindi dailies, Dainik Jagran (Delhi edition of April 22, 2022) and Gurgaon Mail (April 22, 2022 edition).

2.4. It is noted that the Noticee vide email dated May 05, 2022 (from gaba.dhirender@gmail.com) had requested for extension of the hearing scheduled for May 13, 2022 citing medical reasons and asked for an extension of two months. By way of email dated May 27, 2022, Noticee was informed that since considerable time had elapsed, extension request for two months could not be granted. The Noticee vide the said email was provided another hearing opportunity on June 03, 2022 and was given time till May 31, 2022 to file its reply. The Noticee was also informed that if no reply was received or no appearance was made on the scheduled date of hearing, the matter shall be decided based on material available on record. The above-mentioned email was delivered to the email ID: gaba.dhirender@gmail.com and had not bounced back.

2.5. No reply was submitted by the Noticee in response to the allegations made in the SCN. Also, no appearance was entered by the Noticee on the scheduled date of hearing.

2.6. Consequently, the DA enquired into the above-mentioned violations *ex-parte*, and in his report dated June 24, 2022 ("**Enquiry Report**"), found that FCBL had contravened the provisions as enumerated at 2.2 above.

2.7. In view of the same, the DA in terms of Regulation 26(1) of the Intermediaries Regulations recommended that the Certificate of Registration of FCBL be cancelled.

3. Post - enquiry SCN dated July 19, 2022.

3.1. After considering the Enquiry Report, Post-enquiry SCN dated July 19, 2022 bearing No. SEBI/HO/EFD1/DRA3/P/OW/2022/29399/1 under Regulation 27(1) of the Intermediaries Regulations was issued to FCBL (enclosing therewith a copy of the Enquiry Report), whereby FCBL was called upon to show cause as to why action as recommended by the DA or any other direction should not be passed against it in terms of Regulation 27 of the Intermediaries Regulations, as deemed fit ("**Post-enquiry SCN**").

3.2. It is noted from the record that the Post-enquiry SCN was sent by SPAD to the address of the Noticee as provided by it to SEBI: A-312 to A-323, 3rd Chamber, Somdutt Chamber-I, Bhikaji Cama Place, New Delhi - 110066. The Post-enquiry SCN returned to SEBI undelivered with the comment, "No such office". Consequently, affixture of the Post-enquiry SCN was carried out at the above-mentioned address of FCBL on August 07, 2022.

3.3. Pursuant to the service of the Post-enquiry SCN, a personal hearing was scheduled for May 23, 2023 in respect of the Noticee. In this regard, a Hearing Notice dated April 21, 2023 was issued to the Noticee by SPAD at the aforementioned address for intimating the details of the said personal hearing. The Hearing Notice also returned to SEBI undelivered. Consequently, affixture of the Hearing Notice dated April 21, 2023, along with the Post-enquiry SCN containing the Enquiry Report, was carried out at the above-mentioned

address of FCBL on May 12, 2023. However, even after the service of the Hearing Notice dated April 21, 2023, no appearance was entered by the Noticee in the personal hearing scheduled for May 23, 2023.

3.4. In the interests of natural justice, another opportunity of personal hearing was granted to the Noticee on July 13, 2023 at 3.00 pm. The Hearing Notice dated July 03, 2023 was issued to the Noticee by SPAD at the afore-mentioned address for intimating the details of the said personal hearing. The Hearing Notice returned to SEBI undelivered. Also, the Hearing Notice was sent by email at the address: gaba.dhirender@gmail.com, which belonged to Dhirender Gaba, Director of FCBL. However, no response was received in respect of the said Hearing Notice. Consequently, affixture of the Hearing Notice dated July 03, 2023 was carried out at the above-mentioned address of FCBL on July 11, 2023.

3.5. As already brought out, in response to the SCN, the Noticee neither filed any reply nor entered appearance during the personal hearing before the DA. Similarly, in respect of the Post-enquiry SCN, the Noticee has neither filed any reply nor entered appearance during the personal hearings granted.

3.6. In this context, reliance is placed on the observations of the Hon'ble SAT in *Sanjay Kumar Tayal & Ors. vs. SEBI* (Order dated February 11, 2014 in Appeal No. 68 of 2013), wherein it was observed: "... Appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices." Accordingly, I find that the Noticee is not interested in participating in the present proceeding before me. Even though the Noticee has remained *ex parte*, I nonetheless find it relevant that I should be guided by the documents available on record as laid down by the Hon'ble SAT in *Shri B. Ramalinga Raju vs. SEBI* (Order dated May 12, 2017 in Appeal No. 286 of

2014). Accordingly, I shall proceed in respect of the Noticee on the basis of the material on record.

4. Consideration of Issues and Findings

Allegation 1 – Failure to segregate clients’ funds from own funds

4.1. It was alleged in the SCN that certain transactions not relating to clients had been found in client bank accounts. The DA in the Enquiry Report has found merit in the said allegation, and concluded that FCBL had failed to segregate clients’ funds from own funds.

4.2. The details of transactions not relating to clients appearing in client bank account are given below:

Table – 1

Account Name	Date	Voucher	Description / Narration	Dr. Amount	Cr. Amount	Balance	Remarks
HDFC A/C-0003034002 9137	22-May-2017	REAPR 0000144	Vide Cheque No. 009993 / Ft-000303400301 26-globe Fincap Ltd	1,90,00,000	0	17,46,029	Received from Globe Fincap Ltd.
HDFC A/C-0003034002 9137	24-May-2017	PYAPR 0000948	Transfer To 000303400301 26 Globe Fincap Ltd Vide Ref No. 705244995748 _mcx	0	95,00,000	1,12,92,917	Paid to Globe Fincap Ltd.
HDFC A/C-0003034002 9137	24-May-2017	PYAPR 0000949	Transfer To 000303400301 26 Globe Fincap Ltd. Vide Ref No. 705245004351 _mcx	0	95,00,000	17,92,917	Paid to Globe Fincap Ltd.

4.3. In this regard, reference is made to the SEBI Circular SMD/SED/C1R/93/23321 dated November 18, 1993 and SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008. The said circulars mandate that funds received from clients are to be kept in a separate bank account and the account is designated for the purpose of receipt of funds from and payment to clients. The broker should not use this money for his own transactions or for transactions of any other client or for any purpose other than margin and pay-in relating to transaction entered into by such client paying the margin. So, the broker at all times should ensure that the money of the client is kept in the "Member Clients Account" maintained with the Clearing Bank and the funds therein are used for specified purposes.

4.4. As already brought out, it was observed that transactions that were not in respect of the clients were found in the Member Clients Account. FCBL in its comments to the findings of the SEBI Inspection Report has stated that the instance in question was a singular event, and the same had occurred because of the mistake of an employee in FCBL's accounts department, who had only joined 2-3 days prior to the occurrence of the said transaction. Additionally, it has been mentioned that the same was rectified in two days.

4.5. There is no doubt that there is a clear obligation mandating the use of the funds in the clients account only for specified purposes. It must be appreciated that the reason for such a stipulation to be in place is to ensure that the broker while making trades in its proprietary capacity do not dip into the funds of its clients, in case of shortfall of funds. The rectification as claimed by FCBL, even if accepted, does not absolve FCBL since the very act of use of funds from the clients account is a fundamental breach of the need for the segregation of funds. Thus, from the above, I find that FCBL by failing to segregate client funds from its own has violated the instructions in the stated circulars.

Allegation 2 – Misuse of clients’ funds

4.6. It was alleged in the SCN that during the inspection period, on 3 out of 36 trading days the value of G was negative, indicating that funds of credit balance clients were utilised for settlement obligations of debit balance clients or its own obligations. The DA in the Enquiry Report has concluded that FCBL had utilised the funds of credit balance clients for settlement obligations of debit balance clients or its own obligations, thereby violating SEBI Circular SMD/SED/C1R/93/23321 dated November 18, 1993 and SEBI circular No. SEBI/H0/M1RSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

4.7. SEBI in its circular dated September 26, 2016 crystallised the principle that the total available funds of clients i.e. cash and cash equivalents with the stock broker and with the clearing corporation/ clearing broker should always be equal to or greater than clients’ funds as per the ledger balance. If that were not the case, then it indicated that the funds of clients with credit balance had been misused by the broker for its own purposes or to fund the debit balance clients.

4.8. In this regard, the methodology adopted by SEBI to examine the said issue is provided hereunder: -

total fund balance available in all Client Bank Accounts maintained by the stock broker (**A**);

aggregate value of collateral deposited with clearing corporations and/or clearing broker (in cases where the trades are settled through clearing broker) in the form of Cash and Cash Equivalents (Fixed Deposit Receipts, funded portion of Bank Guarantee (BG), etc.) (**B**);

aggregate value of Credit Balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills of clients,

uncleared cheques deposited by clients and uncleared cheques issued to clients) (C); and

Aggregate value of Debit Balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients) (D).

4.9. Based on the methodology mentioned above, the principle as enunciated in the preceding paragraphs was employed in respect of trading effected by FCBL on 36 trading days. The results of the same show that there was a negative value of 'G' on three days:

Table – 2

(Details in Rs.)

SI No.	Date	A	B	A+B	C	G=(A+B)-C
1	31/07/2017	81,22,465	19,44,3793	2,75,66,258	5,63,35,453	-2,87,69,195
2	28/03/2018	24,71,014	1,63,71,636	1,88,42,650	4,09,70,609	-2,21,27,959
3	14/12/2018	6,953,456	1,64,97,926	2,34,51,382	41,764,433	-1,83,13,051

4.10. As is noted from the table, on 3 out of the 36 trading days during the period, April 2017 to December 2018, the value of G is negative. This indicates that funds of credit balance clients were utilised for settlement obligations of debit balance clients or its own obligations.

4.11. In its response to the findings of the inspection carried out by SEBI, it has been submitted by FCBL that G was negative in the three days, since “*wrong figures had been taken in column 'C' by the inspection team*”. Additionally, it has been submitted by FCBL that debit balance clients were negligible and

they had been funded through the own funds of FCBL. Further, it was submitted by FCBL that the inspection had not pointed out that the funds had been used for settlement of proprietary obligation or loss.

4.12. In this regard, reference is again made to SEBI Circular SMD/SED/C1R/93/23321 dated November 18, 1993. The said circular clearly mandated that no money be drawn from client's account other than - money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Broker from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Broker, 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. Consequently money given by clients has to be available with broker all the time. So, there is a clear obligation that money given by clients shall remain with the broker, and the fact that on the demonstrated 3 trading days 'G' was negative meant that the money at all times was not with the broker.

4.13. Also, the assertion by FCBL in its response contended that the taken in column 'C' by the inspection team were not accurate. It is however noted that the information that constitutes the figures of column 'C' are provided by a broker to the concerned stock exchange under the SEBI circular No. SEBI/HO/M1RSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. So, if one considered for the sake of argument that the figures were wrong then that would mean that FCBL had provided wrong figures to the stock exchange. So, this assertion does not hold any merit.

4.14. FCBL has asserted that the inspection did not specifically state that the funds had been utilized to settle proprietary obligation or loss. Even though there is no specific mention of the same in the SEBI Inspection Report, it would not be of much assistance to FCBL. The primary obligation on a broker is that money given by clients shall at all times remain with the broker, and the fact that on certain trading days, money of the clients was not with the broker meant that

there had been a violation of the stated obligation. For what purpose the funds had been utilised i.e., to settle proprietary obligation or loss or to fund debit balance clients, is not material.

4.15. Accordingly, I find that FCBL has violated SEBI Circular SMD/SED/C1R/93/23321 dated November 18, 1993 and SEBI circular no. SEBI/H0/M1RSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Allegation 3 – Non-settlement of clients’ funds

4.16. It has been alleged in the SCN that FCBL had not effected periodic settlement of funds of clients and had also not effected periodic settlement of funds of inactive clients. The DA in the Enquiry Report has concluded that there was non-settlement of clients’ funds by FCBL and thereby it had violated SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

4.17. It is noted from the SEBI Inspection Report that details of the quarter-wise settlement details for the clients were sought from FCBL. The details as provided by FCBL are as under:

Table – 3

FY	Quarter	Total number of active clients during inspection period	Total number of clients during the period	No of clients whose accounts were required to be settled	No. of clients settled	No. of Clients not settled
2017-18	Apr-Jun 2017	1560	1560	1560	1543	17
2017-18	Jul-Sep 2017	1784	1784	1784	1773	11
2017-18	Oct-Dec 2017	1372	1372	1372	1360	12
2017-18	Jan-Mar 2018	1885	1885	1885	1869	16
2018-19	Apr-Jun 2018	2220	2220	2220	2209	11
2018-19	Jul-Sep 2018	2286	2286	2286	2267	19

4.18. Additionally, the settlement position of credit balance clients with credit balance of more than Rs. 10,000 was sought. The details of the same for the same period are as under:

Table – 4

Quarter ended	Total no of credit balance clients		Credit balance outstanding for less than 90 days (in Rs. Crore)		Credit balance outstanding for more than 90 days but less than 180 days (in Rs. Crore)		Credit balance outstanding for more than 180 days (in Rs. Crore)	
	No of clients	Credit balance	No of clients	Credit balance	No of Clients	Credit balance	No of Clients	credit balance
30-Jun- 17	1223	3,17,82,863	1223	3,17,82,863	—	—	—	—
30-Sep- 17	1331	2,61,87,493	469	97,39,880	862	1,64,47,613	—	—
31-Dec- 17	1188	2,62,24,677	370	1,36,21,382	163	27,48,467	655	98,54,829
31-Mar- 18	1603	2,41,27,437	504	1,04,48,887	195	33,10,892	904	1,03,67,658
30-Jun- 18	1891	2,06,19,384	1891	2,06,19,384	—	—	—	—
30-Sep- 18	1885	2,12,65,397	288	83,95,915	1597	1,28,69,482	—	—

4.19. In this regard, reference is made to SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009. Clause 12 of Annexure – A of the said circular provides that unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. From the tables provided above, it is evident that settlements had not occurred in the timeframe provided.

4.20. In its response to the findings in the SEBI Inspection Report, it has been submitted by FCBL that there were some clients who traded on a daily basis and had requested for the funds to be retained. Even considering that the

clients were maintaining a running account, the same had to be settled periodically.

4.21. Reference is made to SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 which provide that the Trading Member should ensure that a maximum gap of 90/30 days (as per the choice of client viz. Quarterly/Monthly) is there between two running account settlements.

4.22. In the table provided above, it is noted that in many instances the running account settlement did not happen even after 90 days. So, FCBL's claim that clients had requested for the funds to be retained does not hold any merit.

4.23. Furthermore, the SEBI Inspection Report has also brought out that there were many inactive clients whose funds were lying with FCBL and their accounts had not been settled. The details of inactive accounts are brought out hereunder:

Table – 5

Quarter Ended	No. of UCCs whose balances have remained same on last dates of successive quarters	Inactive accounts not Settled	
		Maximum Amount (in Rs.)	Credit Balance not settled (in Rs.)
Jun-17	182	71,031.96	8,65,792.53
Sep-17	164	2,37,565.72	13,21,625.66
Dec-17	193	1,71,015.83	10,33,364.21
Mar-18	383	66,631.73	13,16,418.04
Jun-18	384	2,47,217.12	15,21,662.14

4.24. It is stated that for the purpose of running account settlement, a client who has not traded during a quarter is treated as inactive client for the said quarter. In that regard, it is evident from the above table that even in respect of clients who had not traded for a full quarter, their accounts had not been settled. This again belies the claim of FCBL that the accounts of the clients were settled regularly.

4.25. Accordingly, I find that FCBL has violated SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

Allegation 4 – Production of incorrect enhanced supervision data

4.26. It was alleged in the SCN that from a sample of 38 days, on 3 days the data provided by FCBL on the Exchange Platform, in respect of enhanced supervision data, was incorrect. The DA in the Enquiry Report has found merit in the said allegation and concluded that the data provided by FCBL on the Exchange Platform, in respect of enhanced supervision data, on 3 days was incorrect, thereby violating Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016.

4.27. The said circular was brought out pursuant to the recommendations of the Committee on Enhanced Supervision of Stock Brokers/Depository Participants. The purpose was to ensure uniform nomenclature for naming/tagging of bank and DEMAT accounts maintained by brokers and to put in place a sophisticated system for the monitoring of clients' funds lying with the stock broker by stock exchanges. It is in this background that the said circular is of great salience in the monitoring mechanism put in place by SEBI.

4.28. In this regard, specific reference is made to SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016. Clause 6 of the Annexure to the said circular requires Stock Exchanges and Depositories to frame various event based monitoring criteria, so as to initiate appropriate action in case of any event based discrepancies. While the Stock

Exchanges were required to frame various event based monitoring criteria, the circular has provided an illustrative list of events in clause 6.1.1., which includes sharing of incomplete/wrong data or failure to submit data on time by a stock broker.

4.29. It is noted from the SEBI Inspection Report that the inspection, in respect of this particular issue, was concentrated on the verification of details of bank accounts and DEMAT accounts submitted to Exchange by the broker, monitoring of clients' funds lying with stock broker by the Stock Exchanges to detect any misutilisation of clients' funds, name tagging of client and DEMAT accounts and the timely reporting of data by the broker. The above-mentioned verifications were with respect to the submissions of data made by FCBL during the period, April 13, 2017 to December 14, 2018.

4.30. The SEBI Inspection Report has brought out that on verification of FCBL's submissions for clients' funds lying with it on Exchange portal for the sample 38 dates, it was observed that for 3 dates FCBL had incorrectly submitted the details on the Exchange portal.

4.31. Details of bank accounts and DEMAT accounts reported to Exchange were verified with the details provided by FCBL during inspection. Further, number of clients whose balances were reported by FCBL were verified with the count of actual clients who traded as per records available with the exchange. Consequently, discrepancies were observed in data *inter alia* pertaining to aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges, value of collateral deposited with Exchange, value of collateral deposited with clearing member, value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges, value of Debit Balances of all clients, value of Margin utilized for positions of Credit Balance Clients, value of unutilized collateral lying with the Exchange and value of unutilized collateral lying with the clearing member across Stock Exchanges.

4.32. It has already been brought out that for the fulfillment of the purposes of the said circular, brokers are required to provide correct and timely data to the exchanges. Any failure in doing so is a violation of the provisions of the said circular. Accordingly, I find that FCBL has violated SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016.

Allegation 5 – Non-adherence to stipulated client registration process (KYC and KRA process)

4.33. It was alleged in the SCN that FCBL had not carried out client registration in the stipulated manner as prescribed. The DA in the Enquiry Report has concluded that there was non-adherence to stipulated client registration process (KYC and KRA process) thereby violating SEBI Master Circular SEBI/HO/ MIRSD/ DOP1/ CIR/P/2018/87 dated June 01, 2018 and SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011.

4.34. In this regard, reference is made to SEBI Master circular SEBI/HO/ MIRSD/ DOP1/ CIR/P/2018/87 dated June 01, 2018. The said circular prescribes, in its annexures, the manner and content of information/documents to be taken on record during the client registration process. Similarly, as per circular dated August 22, 2011, a uniform documentation process was prescribed for all the stock brokers / trading members. The circular containing six annexures *inter alia* detail the various documents for client account opening process, basic information about the client and instruction/check list to fill up the KYC form, document stating the rights & obligations of a stock broker etc. The SEBI Inspection Report has noted observations given by NCDEX and MCX with respect to the client registration process of FCBL.

4.35. As regards NCDEX, a sample of 50 clients (including 17 clients registered during the Inspection period) was taken up for examination. The details of the sample 50 clients are as under:

Table – 6

Particulars	Active	Inactive
Individual	30	0
HUF	2	8
Corporate/ Partnership	8	2
Total	40	10

4.36. Upon examination of the said sample, it was observed that FCBL was unable to produce one client registration document for registered client, Shree Narayan Aggarwal (HUF), registered on June 23, 2011, which was an inactive client and had not traded as per Exchange records. Also, documents forming part of mandatory documents viz., uniform risk disclosure, rights and obligations and Dos and Don'ts for the clients had not been updated as specified by the extant provisions of law. Further, SEBI registration number had not been updated in client registration documents.

4.37. Additionally, on verification of the client registration documents the following were observed:

Table – 7

Particulars	Wrong/ Incomplete	Correct	Total
Financial Proof Obtained / not updated	44*	5	49
Tariff Sheets	16	33	49
Contradictory clause (if any)	6	43	49
In Person verification of Clients	47	2	49
Quarterly Settlement Authorization	49	0	49
CKYC (For Individuals clients only)	29	1	30

KRA	0	49	49
Date of consent for trading on exchange / Trading preferences.	2	47	49
Board Resolution for trading in Exchange in case of Corporate clients	2	5	7

**Details of Financial proof obtained / not updated instances are further bifurcated as below:*

Table – 8

Details not updated periodically	Not obtained at the time of client registration	Total
5	39	44

4.38. As regards MCX, a similar sample of 50 clients was taken up for examination. The details of the sample 50 clients are as under:

Table – 9

Particulars	No. of Clients
HUF	3
Partnership	4
Company	1
Individual	42
Total	50

4.39. Upon examination of the said sample, it was observed that FCBL had used the old format for KYC documents including Rights & Obligations and Guidance Notes etc., running account authorisations had not been obtained/were not available in KYC documents. Where running account authorisations had been obtained, they were not as per prescribed

requirements (Monthly/quarterly settlement preference not obtained), Electronic Contract Note declaration was not as per prescribed format, supporting documents in respect of the financial/income status of the client had not been obtained in KYC documents and client financial information had not been updated periodically at least once in financial year and supporting documents not obtained.

4.40. It has already been brought out that there was an obligation on FCBL to take on record specific documents and capture data in a particular manner during the process of client registration. The above-mentioned paragraphs clearly demonstrate that the said obligations have not been carried out by FCBL. In view of the same, I find that FCBL has violated SEBI Master circular SEBI/HO/MIRSD/ DOP1/ CIR/P/2018/87 dated June 01, 2018 and SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011.

Allegation 6 – Uploading of incorrect mobile number and email ID in UCC database

4.41. It has been alleged in the SCN that FCBL had entered incorrect mobile numbers and email IDs in respect of UCCs, and in certain cases the same mobile numbers/email IDs had been used in respect of multiple UCCs. Accordingly, it has been alleged that FCBL had violated SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

4.42. In this regard, specific reference is made to Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011. As brought out in the earlier part of this Order, the stock broker was required to enter the details of clients, and to ensure that separate email IDs and mobile numbers were entered in respect of each of the clients.

4.43. It is seen from the SEBI Inspection Report that, in respect of this particular issue, details in respect of all active clients during the inspection period were examined. Upon examination, it was observed that the number of instances of incorrect email ID as per Member Back office vis-a-vis Exchange UCC was 155. Similarly, the number of instances of incorrect mobile number as per Member Back office vis-a-vis Exchange UCC was 109. In certain cases, it was also observed that email ID and Mobile number had not been uploaded onto Exchange UCC. Further, on sample verification, it was observed that same mobile number / email ID had been uploaded for multiple client codes. The number of instances wherein same email ID had been used for multiple clients was found to be 50. Similarly, the number of instances wherein same mobile number was used for multiple clients was found to be 15.

4.44. An obligation existed under SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 on FCBL to upload the necessary details of its clients with the UCC updation module and ensure that separate mobile number/E-mail address was uploaded for each client. It is quite evident that FCBL has failed in carrying out the said obligation. Accordingly, I find that FCBL has violated SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

Allegation 7 – Violation of the provisions of the PFUTP Regulations and Code of Conduct

4.45. It was also alleged in the SCN that FCBL by carrying out the acts narrated in the preceding paragraphs had violated Section 12A of SEBI Act, 1992 read with Regulation 4(1) and 4(2)(f) of the PFUTP Regulations. The DA in the Enquiry Report has found that FCBL had through its acts violated the said provisions of the PFUTP Regulations.

4.46. It has already been brought out in the preceding paragraphs that FCBL had carried out acts that resulted in – failure to segregate client funds from own funds; misuse of clients' funds; non-settlement of clients' funds; providing

wrong/incomplete enhanced supervision data; improper client registration process; and incorrect mobile number and email ID.

4.47. In this regard, it has also been alleged in the SCN that FCBL by carrying out the above acts had violated Section 12A of SEBI Act, 1992 read with Regulation 4(1) and 4(2)(f) of the PFUTP Regulations.

4.48. In this regard, reference is made to the specific provisions alleged to have been violated: Section 12A of the SEBI Act read as under—

“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 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.”

4.49. It is noted from the above that Section 12A (d) deals with insider trading, Section 12A (e) deals with the actions relating to dealing in securities pursuant to material or non-public information or communicating such material or non-public information to any other person for dealing in securities and Section 12A (f) deals with acquisition of a company in contravention of extant provisions. It is noted that the present matter does not deal with the above issues. Accordingly, the application of Section 12A (d), (e) and (f) needs to be excluded from the present consideration.

4.50. Thus, the consideration in case of FCBL shall also be confined to Section 12A (a), (b) and (c). It is noted from the preceding paragraphs that FCBL on 3 trading days, out of the sample 36 days trading days chosen for inspection, had misused the funds of clients. Also, there were many instances where settlement of funds of clients hadn't happened for even 180 days. This resulted in large sums of money, that belonged to the clients, being in the hands of FCBL. Further, there was failure in segregation of the funds of the clients from those of FCBL. These actions resulted in the funds of the clients coming to the possession of FCBL. So, the facts clearly demonstrate that FCBL had employed manipulative devices to defraud and deceive, and ensure that the funds of the clients came to its control and could be misused by it. Accordingly, I find that FCBL has violated Section 12A(a), (b) and (c).

4.51. Regulation 4(2) provides that – *“Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following...”* Regulation 4(2)(f) reads as: *“knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information 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”.

4.52. It has been brought out in the preceding paragraphs that FCBL had submitted inaccurate and untrue information to the exchanges while providing enhanced supervision data. Thus, FCBL by reporting incorrect and untrue details to the exchanges has violated 4(2)(f) of the PFUTP Regulations.

4.53. Regulation 4 (1) reads as: “...no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.” The preceding paragraphs have clearly brought out the various instances of FCBL indulging in a manipulative, fraudulent or unfair trade practice. That being the case, the obligation as existing in the said regulation has clearly been violated by FCBL.

4.54. In view of the aforesaid acts of commission and omission on the part of FCBL, the SCN has also alleged that FCBL had violated Clauses A (1), A (2) and A (5) of the Code of Conduct as provided under Schedule II read with Regulation 9 of the Stock Brokers Regulations and Section 12A of the SEBI Act read with Regulation 4(1) and 4(2)(f) of the PFUTP Regulations.

4.55. In this regard, reference is made to the Code of Conduct as provided in the Stock Brokers Regulations. Clause A (1) provides that a stock broker should maintain high standards of integrity, promptitude and fairness in the conduct of all his business. Clause A (2) provides that a stock broker should act with due skill, care and diligence in the conduct of his business. Clause A (5) provides that a stockbroker should abide by all the provisions of the SEBI Act and the Rules and Regulations framed by the Government, SEBI and the Stock Exchanges.

4.56. It is seen from the facts brought out above that FCBL has been found to be in violation of various stipulations of SEBI and the Exchanges. Thereby acting in breach of regulatory prescriptions. So, FCBL has clearly violated Clause A

(5) of the Code of Conduct. Additionally, it has been brought out that running account settlement, even though stipulated to take place at least once in a month or a quarter as per the preference of the client, had not happened in many cases even after 180 days i.e., six months. This resulted in funds of the client lying with FCBL. This clearly exhibited a lack of promptitude on the part of FCBL in executing its obligations, which resulted in the funds of the clients not being available to them. FCBL has clearly violated Clause A (2) of the Code of Conduct. Further, it has been elaborated in the preceding paragraphs that FCBL had entered incorrect mobile numbers and email IDs in respect of UCCs, and in certain cases the same mobile numbers/email IDs had been used in respect of multiple UCCs. Also, FCBL had not carried out client registration in the stipulated manner and had not provided correct enhanced supervision data. These facts exhibit a lack of due skill, care and diligence in the conduct of business. So, FCBL has clearly violated Clause A (1) of the Code of Conduct.

5. Conclusion

5.1. The foregoing paragraphs demonstrate flagrant violation of the provisions governing the functioning of a stock broker and deep apathy towards the interests of the clients.

5.2. Accordingly, in view of the above, the Noticee has violated the provisions as enumerated at paragraph no. 2.2 of this Order. The findings of the Enquiry Report are indeed shocking and disturbing and show that the Noticee did not carry out its fiduciary responsibility towards its clients. I note from the Enquiry Report that the DA has recommended that the Certificate of Registration of the Noticee be cancelled. Considering the findings brought out in the foregoing paragraphs, I find myself in agreement with the recommendation made by the DA. Accordingly, the Noticee is liable for action under Section 12(3) of the SEBI Act read with Regulation 27 of the Intermediaries Regulations (as

amended vide SEBI (Intermediaries) (Amendment) Regulations, 2021 with effect from January 21, 2021).

6. Order

6.1. I, in exercise of powers conferred upon me in terms of Section 12(3) and Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the Intermediaries Regulations, hereby direct the cancellation of the Certificate of Registration of the Noticee i.e. **Fairwealth Commodity Broking Pvt. Limited** as a Stock Broker in Commodity Derivative Segment bearing Registration No. INZ000033733.

6.2. This Order shall come into force with immediate effect.

6.3. The Order shall be served on the Noticee immediately. A copy of this Order shall also be served on MCX and NCDEX for ensuring compliance of this Order.

Place: Mumbai

Date: July 19, 2023

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA