<u>BEFORE THE ADJUDICATING OFFICER</u>

<u>SECURITIES AND EXCHANGE BOARD OF INDIA</u>

[ADJUDICATION ORDER NO. Order/MC/HP/2020-21/ 3-5]

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

In respect of –

1) **Twentyfirst Century Shares and Securities Ltd (PAN: AAACT2542D)** having address at - 2/b, Grease House, Zakaria Bunder Road, Sewei (w), Mumbai - 400015, Maharashtra, India

2) **IFCI Financial Services Limited (PAN: AAACI0567P)** having address at - 'Continental Chambers', 3rd Floor, 142, M.G Road, Nungambakkam, Chennai - 600034, Tamil Nadu, India.

3) **Motilal Oswal Securities Ltd. (PAN: AAACD3654Q)** having address at - Palm Spring Centre, Next to D-Mart, 2nd Floor, Malad West, Mumbai - 400064, Maharashtra, India.

In the matter of trading activities in the scrip of Zylog Systems Limited

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1. Securities and Exchange Board of India (hereinafter be referred to as, **'SEBI'**) initiated adjudication proceedings against **Twentyfirst Century Shares and Securities Ltd., IFCI Financial Services Limited and Motilal Oswal Securities Ltd** (hereinafter referred to by **Noticee 1, Noticee 2** and **Noticee 3** respectively or collectively as 'the **Noticees**').
2. Adjudication Proceedings were initiated against the Noticee 1 under section 15HA and 15HB of SEBI Act, 1992 (**'SEBI Act'**) for alleged violations of Section 12A (a), (b), (c) of SEBI Act read with Regulations 3 (a), (b), (c), (d), 4 (1) and 4 (2) (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the

Securities Market) Regulations, 2003 (**'PFUTP Regulations'**), SEBI Circular No. MIRSD/SE/Cir-19/2009 dated 03/12/2009 (hereinafter be referred to as, **'SEBI Circular'**), Clauses A (1) and A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter be referred to as, **'Brokers Regulations'**). Further, Adjudication Proceedings were initiated against the Noticee 2 and Noticee 3 under section 15HB of SEBI Act for alleged violations of Clauses A (1) and A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of Brokers Regulations pursuant to investigation in the matter of trading activity in the scrip of Zylog Systems Ltd (hereinafter referred to as 'ZSL/Company/Scrip') for the period January 01, 2012 to December 31, 2012 (hereinafter referred to as **'Investigation Period/IP**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer *vide* an order dated January 31, 2019, to enquire into and adjudge under Section 15HA and 15HB of the SEBI Act, the aforesaid alleged violations against the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. EAD5/MC/HP/33162/1/2019 dated December 11, 2019 (hereinafter be referred to as, the **'SCN'**) was served upon the Noticees under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticees under Section 15HA and 15HB of SEBI Act for the aforesaid alleged violations.

5. It was alleged in the SCN that the Noticee 1 bought the shares for and on behalf of its client, Sthithi Insurance Services Pvt Ltd (hereinafter be referred to as **'Client/Sthithi'**), however, these shares were not transferred to the Beneficial Owner A/c (BO A/c) of Sthithi and held in the BO A/c of Noticee 1 (except at times

when certain shares were transferred by the Noticee 1 to the client DP A/c, based on client requests – for example 45,000 shares transferred on 15/10/2012). Further, as per the account opening form *Sthithi* was based at Chennai, and the Noticee 1 was based at Mumbai.

6. Further, based on replies of Noticee 1 and emails found in the backup provided by ZSL it was alleged that there was an arrangement and understanding between Noticee 1 and Sthithi which included funding and buying the shares of ZSL by Noticee 1 (broker) for Sthithi (client), holding the shares of client in its own beneficiary account and not transferring the shares to the client account.

7. In view of the above, it was alleged that the Noticee 1 has violated Clauses A (1) and A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of Brokers Regulations, Section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d), Regulation 4(1) and Regulation 4(2) (g) of PFUTP Regulations and SEBI Circular.

8. It was also alleged in the SCN that Noticee 1 (broker of Sthithi), Noticee 2 (broker of Sthithi and Srikanth Sripriya) and Noticee 3 (broker of Srikanth Sripriya) had accepted orders from persons other than the client, without any authority.

9. In view of the above, it was alleged that Noticee 1, Noticee 2 and Noticee 3 have contravened Clauses A (1) and A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of Brokers Regulations.

10. The aforesaid regulations are reproduced as under;

Brokers Regulations:

[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.

(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.

SEBI Act:

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;

PFUTP Regulations:

3. Prohibition of certain dealings in securities No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

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

(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 fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves: —

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

11. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15HA and 15HB of the SEBI Act, which reads as follows:

SEBI Act:

<u>Penalty for fraudulent and unfair trade practices.</u>

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

<u>Penalty for contravention where no separate penalty has been provided.</u>

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

12. In response to the SCN, Noticee 1 *vide* letter dated December 19, 2019 requested for inspection of documents and copy of Investigation Report. An opportunity of inspection of documents was provided to Noticee 1. As per the available records, Mr. Farooqui Raza and Ms. Aayushi Sharma, Authorized representative of Noticee 1 had carried out the inspection of documents on behalf of Noticee 1 on February 26, 2020. Subsequently, *vide* email dated May 18, 2020 an opportunity of personal hearing through Video Conferencing was provided to Noticee 1 on May 26, 2020.

Hearing on May 26, 2020 was attended by Mr. Sundar Iyer, Mr. A.V.M. Sundaram, Mr. Khalid Farooqui and Ms. Aayushi Sharma, the Authorised Representatives of Noticee 1 (AR). AR of Noticee 1 reiterated the submissions made in its reply dated May 22 and May 25, 2020 and agreed to submit additional reply with respect to the alleged violations at paragraph 5(c) and 5(e) of the SCN. In this regard, *vide* email dated May 27, 2020, Noticee 1 filed its additional submissions.

13. *Vide* letter dated January 20, 2020, Noticee 2 filed its reply and requested for inspection of Investigation report, market wide trade log and also requested for personal hearing. An opportunity of inspection of documents was provided to Noticee 2 *vide* letter dated March 11, 2020. Subsequently, *vide* email dated May 18, 2020 an opportunity of personal hearing through Video Conferencing was provided to Noticee 2 on May 26, 2020. Hearing on May 26, 2020 was attended by Mr. Ravi Vijay Ramiya, the Authorised Representative of Noticee 2 (AR). AR of Noticee 2 reiterated the submissions made in its reply dated May 22, 2020.

14. In response to the SCN, Noticee 3 vide letter dated requested for inspection of documents including Investigation Report. An opportunity of inspection of documents was provided to Noticee 3. As per the available records, Mr. Robin Shah, Authorized representative of Noticee 3 had carried out the inspection of documents on behalf of Noticee 3 on February 13, 2020. Subsequently, vide email dated May 18, 2020 an opportunity of personal hearing through Video Conferencing was provided to Noticee 3 on May 26, 2020. Noticee 3 filed its submissions vide email dated May 20, 2020. Hearing on May 26, 2020 was attended by Mr. Ravichandra S. Hegde, Mr. Robin M. Shah, Mr. Brijesh Bhatt and Mr. Neeraj Agarwal, the Authorised Representatives of Noticee 3 (AR). AR of Noticee 3 reiterated the submissions made in its reply dated May 20, 2020.

15. The key submissions of Noticee 1 are summarized as below:

a) Noticee 1 submitted that on perusal of the SCN and the relevant extracts of the Investigation Report, Noticee 1 find that they have been charged merely on account of the fact that shares of ZSL purchased for Sthithi Insurance Services Limited (Sthithi), were not transferred to Beneficial Owner Account (BO A/C) of Sthithi and remained in BO account of Noticee 1. Further, no further details and evidences have been given to Noticee 1 as to how the charges as per SCN can be exacted merely because of the fact that the shares were not transferred to the BO account of Sthithi and remained in the BO account of Noticee 1.

b) Noticee 1 had provided a trading limit to Sthithi in the course of business between client and broker, as per the explicit understanding with Sthithi. Sthithi failed to pay in for the shares purchased in their account and as a prudent risk management measure and as security, these shares purchased were not paid out to Sthithi and the same continued to remain with Noticee 1 in its BO account. The same was done as per explicit understanding with Sthithi and Sthithi was fully aware of the same at all times. Keeping shares purchased by the broker for its client in its own BO account and not transferring to the same to client BO account can never constitute a fraud on the client, or on the market by any stretch of imagination, if the same was done as per understanding with the client as in the instant matter.

c) Further, the fact that the limit was accorded to Sthithi in the normal course of business between the client and the broker is clear from the submissions to the SEBI and the Investigation Report does not find fault with the same in any manner and accepts that the limit was given in the course of business between the broker and the client. The SCN as well as the Investigation Report do not point out any irregularity in any manner on the issue of granting limit to Sthithi and the only charge made out is that, Noticee 1 committed fraud and violated SEBI Regulations/Circulars by not transferring the shares to the BO account of Sthithi.

d) Noticee submitted that under the facts and circumstances, the shares could not have been transferred to the BO account of Sthithi as the funds were due and the mere fact of not transferring the shares to the BO account of Sthithi in the facts and circumstances cannot constitute a fraud on Sthithi who was fully aware of the fact that the shares were not being transferred to it and the same was being done as per explicit understanding. In fact, para 12 (d) of Annexure A to the SEBI circular, referred in the SCN, explicitly permits the same.

e) Further, there is no charge against Noticee 1 that by granting trading limit to Sthithi, Noticee 1 aided or abetted any irregularity or fraud by Sthithi (if any), in any manner. As mentioned in submissions dated October 24, 2018 (Copy enclosed), Noticee 1 suffered a loss of Rs. 1.10 crore for trading with Sthithi. The same has not been contradicted, (therefore accepted) in the Investigation Report.

f) Noticee 1 submitted that the Chennai client was trading through our Mumbai branch because trading limit was involved, which was controlled and monitored only at Mumbai. Further, Noticee 1 had surrendered its Certificate of Registration in the year 2013, which was accepted in the year 2014 and hence Noticee 1 is no more a SEBI registered Stock Broker. Noticee 1 was a registered Broker for twenty years with hundreds of clients and client turnover of thousands of crores, in cash and F&O segments. The Noticee was never found wanting or deficient in respect of granting trading limit to clients, margin funding, settlement with clients and payout of securities to clients.

g) In the matter of SEBI vs Rakhi Trading (Civil Appeal No. 1969 of 2011) dated 18th February 2018, the appellant brokers had relied on several judgements of the Hon'ble Securities Appellate Tribunal to make their case. In one such judgment, Kishor R. Ajmera vs. Securities and Exchange Board of India (Appeal No. 13 of 2007) dated February 5, 2008, the Hon'ble SAT had observed that "***Merely because two clients have executed matched trades, it does not follow that their brokers were necessarily a party to the game plan***………***If the Board is to hold the broker (or the sub-broker) responsible for a matching trade, it has to allege and establish that the broker (or the sub-broker) was aware of the counter party or his broker at***

the time when the trade was executed. There is no such allegation in this case." (Para 29 Page 36 of the order). The Hon'ble Supreme Court in Para 44 (pg53) has accepted this judgment of SAT in the matter of Rakhi Trading.

h) Noticee submitted that for the Board to hold anything against a Broker, with respect to the trades of a client, a case has to be made out that the broker was aware of the 'illegitimacy' of the transaction of the client. A broker cannot be charged for a fraudulent / illegitimate trade of its client unless there is concrete evidence to prove that the Broker knew about the nature of the transaction or was a party to such transaction. In the instant matter, no such facts have been alleged to exist and no such case has been made out against the Noticee 1. Other than the fact that there was a trading limit given and the shares were not transferred to the BO Account of Sthithi, no other facts and evidences have been brought out against the Noticee1.

i) With respect to alleged charge that Noticee 1 had accepted orders from persons other than the client without any authority, Noticee 1 submitted that Sthithi was introduced by Mr. P Srikanth – Director of ZSL who approached Chennai Office of Noticee 1 for opening the client account. The account was opened through Authorized Representative of Sthithi at Chennai. Sthithi authorized the email address of Mr. P Srikanth (srikanthp@zsl.com) as the official email address in respect of the communications of trading to be made with Sthithi, wherein Noticee 1 used to send the digital contract notes. Further, Noticee 1 used to receive orders for execution through their board line number, and Noticee 1 did not have the facility of caller identification and recording of calls to identify the number(s) from which these calls were made.

j) Noticee 1 submitted that Mr. P Srikanth was authorized person for trading with Sthithi, therefore there is no substance in alleged charge that Noticee 1 had accepted orders from persons other than the client, without any authority.

k) Noticee 1 finally submitted that they have not violated any provisions of SEBI Act, Regulations or Circulars, therefore the SCN against Noticee 1 may be dropped.

16. The key submissions of Noticee 2 are summarized as below:

a) Noticee 2 submitted that it is a subsidiary of IFCI Ltd, a premier financial institution owned by the Government of India. As a public sector undertaking, it exercises utmost care and caution in conduct of business and ensures all necessary controls are in place to adhere to the compliance requirements in letter as well as spirit with the regulatory framework of SEBI, Exchanges and other government authorities. Further, the staff of a PSU is always subject to scrutiny from various independent entities / bodies like the Parent Company, Independent Directors, CAG, CVC and other government bodies, thus keeping the staff on its toes to ensure full Compliance with the requirements of law.

b) The Clients Srikant Sripriya (Sripriya) and Sthithi were registered with them by executing an agreement and fulfilling the KYC requirements in May 2010 and May 2011. The telephone numbers mentioned in the KYC of Sripriya are 044-28152849 and 9840092896 and in case of Sthithi is 9840092896. The SCN records that Noticee 2 received the orders for these clients from these numbers only. Further, the Email ID mentioned in the KYC of these clients is srikanthp@zsl.com and as rightly recorded in the SCN all contract notes for these clients were sent to the said email ID. The dealing desk of Noticee 2 is well trained and experienced to handle client orders in line with the requirements of SEBI and Exchanges. They only accept orders that come from the registered numbers and this has been adhered to in the current case as well. Further, the dealers ensure that the calls are from the registered numbers of the clients. In case they are not from registered numbers, then they probe further and ask for further information from client to confirm whether the person placing the order is the registered client or someone else.

c) The investigation is with regards to the trades executed by Sripriya and Sthithi during the period January 1, 2012 to December 31, 2012 for which all the contract notes are issued to them. They have never raised any dispute regarding the trades. This in itself means that the trades were accepted by them and therefore they were completely authorized. Had the orders been placed by persons without any authority, then they would have surely denied the trades, which is not observed in the current case.

d) There is nothing in the SCN that questions the integrity of Noticee 2 as all the trades have been carried out upon receiving instructions and obligations thereof have been settled. The clients have accepted the trades and therefore there is no question of not maintaining integrity, promptitude and fairness as alleged or at all. Further, with regards to exercise of due skill and care, orders were received from the registered numbers as given in the KYC. The person placing the orders clearly stated securities to be transacted, quantity etc. and all trades were placed in line with the orders. Further, it was reasonable for the dealers to ensure that the orders are being placed from the registered numbers. There is no prohibition on accepting orders from clients from registered numbers, and all the trades were authorized by the clients. Therefore, Noticee 2 have acted with due skill, care and diligence.

e) Noticee 2 has not violated any requirements of SEBI as alleged in the SCN or at all and therefore the SCN should be set aside without any adverse inference.

17. The key submissions of Noticee 3 are summarized as below:

a) Noticee 3 was incorporated in the year 1987 and has grown over the years to become one of the leading stock broking companies in India. Noticee 3 has always maintained high standards of ethical integrity, due diligence and has always been compliant with all the rules and regulations prescribed by the regulator from time to time. There has never been any instance where SEBI had alleged any such allegation as contained in the Show Cause Notice.

b) The details of email-id on which contract notes were sent are mentioned as srikanthp@zsl.com instead of sripriya.srikanth@gmail.com in the SCN. Noticee 3 submitted that the said email-id was not provided by them and the same has erroneously been reproduced in the SCN. The orders placed by Sripriya and her husband P Srikanth were duly authorized by Sripriya and trade confirmation by way of electronic contract notes ("ECN") was duly sent to her. Till date there has been no grievance or any complaint raised by Sripriya on any of her trades executed by Noticee 3.

c) The telephonic recording of order placement via telephone was introduced by SEBI only with effect from September 26, 2017 and the trades in question pertain to the year 2012. However, Noticee 3 have tried to collate the documents and provided the same.

d) There is no dispute raised by Sripriya in respect of the order(s) executed in her account by herself and by P Srikanth. From the Orders (dated June 13, 2013 and June 7, 2016) passed by Whole Time Member of SEBI, it can be observed that even in their representations there is no dispute on the order(s) executed with Noticee 3 by either of them. Even the investigating authority could not determine that the order(s) were placed without Sripriya's authority. From her statements before investigating authority (which was shown to Noticee 3 at time of inspection, though a copy not provided despite request), Sripriya has not even disputed or contested the fact that she did not authorize P Srikanth to place order(s) on her behalf.

e) Sripriya approached Noticee 3 for dealing in all the segments of the stock exchange(s) somewhere in May-2012. After conducting preliminary checks and diligence, her account was opened on May 12, 2012. At the time of account opening all the mandatory documents like Know Your Customer ("KYC") form, identity card(s), bank proof(s) were obtained from Sripriya. In the said KYC, Sripriya recorded that her email id is sripriya.srikanth@gmail.com (on which electronic contract notes were sent) and mobile number is 9940114402 (from which the orders were placed). All the contract notes and all the communications from Noticee 3 was always sent on the same email id and telephone number. Further, Sripriya had a HNI account availing premium services, therefore the system assigned her a relationship manager, who took all the possible care and diligence in obtaining instructions from Sripriya while placing her order(s). Sripriya had informed to relationship manager that the orders in her account would be placed either by herself or by her husband P Srikanth on her behalf. The first trade in her account was placed on July 16, 2012 in the scrip of ZSL by P Srikanth. Immediately thereafter, in order to reconfirm whether the client received confirmation of trades, a telecon was made to her registered mobile number on July 27, 2012 from back-office compliance team. In the said call, Sripriya confirmed that her husband P Srikanth was looking after her broking account. Noticee 3 submitted voice recording as retrieved from back-office software.

f) Further, after the confirmation received by Sripriya that her husband also takes care of her account, a further verification was done to confirm this position. So another phone call was made to P Srikanth's mobile number which was provided by Sripriya. In the said phone call, P Srikanth confirmed that they have been receiving trade and order confirmation(s) from Noticee 3. Noticee 3 submitted voice recording as retrieved from its back-office software.

g) Noticee 3 has not taken accepted order(s) from P Srikanth without the knowledge or consent of Sripriya. All the order(s) were placed through proper channels and there was nothing amiss in their dealing, in so far as to raise any alarm or suspicion of any kind. Further, no dispute was ever raised by Sripriya for any of the trades which were executed in her account.

h) Sripriya traded only in ZSL and her trading was in normal course which was like the trading of other 500 client(s) who were dealing in scrip of ZSL at the relevant point in time. There was nothing amiss or suspicious in the trading activity of Sripriya. Further, there was no default in any of her transactions and the trades were conducted in the normal course after obtaining sufficient margin as per risk policy of Noticee 3. The pay-in and pay-out obligation was always complied with and there was no default of any kind.

i) According to Black's law dictionary (18th Edn), *"Due Diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation."* Noticee 3 submitted that they were diligent, and they did everything that was reasonable. While trading on behalf of Sripriya, Noticee 3 was careful and assiduous in discharge of duties.

j) Noticee 3 submitted that it is a trait law that standard of due diligence expected from an intermediary depends upon the facts of the case and the charge cannot be based on mere suspicious and conjectures. In the case of Imperial Corporate Finance and Services Private Limited ([2005] 61 SCL 197 (SAT), the Hon'ble SAT opined as under:

"…We however hold that before any person is found to have violated the concept of "due diligence", there must be an enquiry and the finding must be sustained by a higher degree of proof than that required in a civil suit, yet falling short of the proof required to sustain a conviction in a criminal prosecution…"

k) Noticee 3 further submitted that in Prabhudas Lilladher case (re: Order/MC/HP/202021/1), another Noticee in the common SCN issued to them, the Adjudicating Officer has disposed of the Show Cause Notice without any penalty. The relevant extract of the order is provided below:

"18 … I note that the person placing orders was connected to the client as introducer and witness. I also note that the trade details were duly informed to the client through trade confirmation emails, contract notes as well as margin details. Hence, vis-a-vis the client, there is only one email on record stating unawareness regarding a trade over a period of around 3 years when the client traded with the Noticee. Hence, I am of the view the Noticee took adequate steps to keep the client informed of all trades and the client was aware of the

arrangement for placing orders and gave implied consent by not objecting to it". Noticee 3 submitted that they are better placed on all parameters considered by the Adjudicating Officer (AO), which can be seen hereunder:

Sr. No.	**Parameter considered by AO**	**Submissions of Noticee 3**
1	Connection between the Noticee and person placing Order	Srikant and Sripriya are husband & wife. Both have confirmed that they were in-sync and have been placing the orders.
2	Consent of client	The call recording clearly shows that Sripriya gave unequivocal and unambiguous consent that her husband i.e. P Srikanth was placing orders/managing her account
3	Noticee took adequate steps to inform the client	ECN were sent to Sripriya's registered email-id (i.e. sripriya.srikanth@gmail.com) and same were duly delivered
4	No dispute on execution of trades by client	While appearing before the investigating officer, Sripriya has not even disputed or contested the fact that she did not authorize P Srikanth to place order(s) on her behalf

l) Noticee 3 submitted that in our country, clients normally authorize their immediate family member(s) to operate their bank, demat and broking accounts. This practice is more common in case of husband and wife. Noticee 3 has traded only on behalf of Sripriya, that too under her authority, which is neither disputed by Sripriya or P Srikanth. Unlike other co-noticees brokers, Sthithi or M V Ganesan were not the clients of Noticee 3.

m) At the relevant time, Noticee 3 had large number of clients dealing in various scrips and thus adverse inference ought not be drawn in respect of dealing of a single client in a single scrip. If one considers the percentage of the trades of Sripriya to overall operation of Noticee 3, the same is miniscule to slip out of radar for any venial compliance.

n) The proceedings are being conducted after an inordinate delay of eight (8) years and the same has impaired ability of Noticee 3 to retrieve old records and data. The Hon'ble SAT has in a recent ruling in the case of Ashlesh Shah (decided on January 31, 2020) has opined that delay of around seven (7) years in initiation of proceedings was violative. While setting aside the penalty Order passed by SEBI, Hon'ble SAT opined that:
'In the light of the aforesaid, there has been an inordinate delay in the issuance of the show cause notice. Even though there is no period of limitation prescribed in the Act and Regulations in the issuance of a show cause notice or for completion of the adjudication proceedings the authority is required to exercise its powers within a reasonable period as held recently in Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabari (2019) SCC OnLine SC 294. In the instant case, the power to adjudicate has not been exercised within a reasonable period and therefore no penalty could be imposed…… As a result, without going into the merits of the case, on account of the inordinate delay in the initiation of the proceedings by issuance of a show cause notice, the penalty order cannot be sustained.'

o) There is no quantifiable gain or unfair advantage accrued to them due to alleged violation, if any and none is quantified in SCN. No harm, loss or prejudice has been caused to the investors and in any case, at no point in time, Sripriya has disputed the trades carried out in her account through Noticee 3 and thus no adverse inference is warranted. Further, there is no repetitive nature of default as this is the first time that such an allegation is being made against Noticee 3.

p) Based on aforesaid submissions, the SCN be disposed of without imposing any adverse inference or monetary penalty.

18. In the light of the allegations contained in the SCN, submissions of the Noticees and relevant material available on record, I now proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

19. The issue that arise for consideration in the instant matter is:

Issue No. I	Whether Noticee 1 violated Section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d), Regulation 4(1) and Regulation 4(2) (g) of PFUTP Regulations and SEBI Circular as alleged in the SCN?
Issue No. II	Whether Noticee 1, 2 and 3 had accepted the orders from person other than the Client in violation of Clauses A (1) and A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of Stock Brokers Regulations as alleged in the SCN?
Issue No. III	If yes, whether the aforesaid violations would attract penalty under Section 15HA and 15HB of the SEBI Act?
Issue No. IV	If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

Issue No. I Whether Noticee 1 has contravened Clauses A (1) and A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, Section 12A (a), (b), (c) of SEBI Act read with

Regulations 3(a), (b), (c), (d), Regulation 4(1) and Regulation 4(2) (g) of PFUTP Regulations and SEBI Circular as alleged in the SCN?

20. From the submission of Noticee 1, it is seen that it had provided a trading limit to Sthithi in the course of business between client and broker, as per the explicit understanding with Sthithi. However, Sthithi failed to pay in for the shares purchased in their account and as a prudent risk management measure and as security, these shares purchased were not paid out to Sthithi and the same continued to remain with Noticee 1 in its BO account.

21. The allegation against Noticee 1 is that it had an arrangement and understanding with Sthithi Insurance Services Pvt Ltd which included funding and buying the shares of ZSL by Noticee 1 and holding the shares of client in its own beneficiary account. Based on the material on record, I find that the Noticee 1, after opening account for Sthithi, facilitated trading by Sthithi in the shares of ZSL as per instructions by P Srikanth. Noticee 1 gave an overall funding limit of Rs.8-10 crores to Sthithi, against which the shares were held in the BO account of Noticee 1. I note that trading was carried out by P Srikanth of ZSL and as per material on record, the role of Noticee 1 is limited to providing trading account and funding to Sthithi. Material on record does not bring out any role of Noticee 1 in the actions of Sthithi or P Srikanth.

22. I note that Noticee 1 has not denied funding to Sthithi. It has admitted providing a trading limit to Sthithi and kept the securities so purchased as security in its own BO account. It has further submitted that it suffered a loss of Rs.1.10 crore on account of this client. I take note of the submission of Noticee 1 that keeping shares purchased by the broker for its client in its own BO account and not transferring to the same to client BO account can never constitute a fraud on the client, or on the market by any stretch of imagination, if the same was done as per understanding with the client as in the instant matter.

23. I note that Sthithi had taken funding through several brokers as mentioned in the SCN. In most instances, the funding was through NBFC arm of the brokers, whereas Noticee 1 has funded directly. In this regard, that no charge is made in the SCN against the Noticee 1 for funding per se. I further note that SEBI in its circular dated May 07, 1997 stated that *borrowing and lending of funds, by a trading member, in connection with or incidental to or consequential upon the securities business, would not be disqualified under Rule 8(1)(f) and 8(3)(f) of the Securities Contract (Regulation) Rules, 1957*.

24. The act of funding trades by Noticee 1 is no different from that of other brokers, except that other brokers did so through their NBFC arm. However, by funding the its client to the extent of Rs. 8 to 10 crores, the Noticee, engaged in lending of funds beyond the remit of circular dated May 07, 1997 and thus failed to act with due skill, care and diligence in the conduct of its business in violation of Clauses A (2) of the Code of Conduct for Brokers.

25. With regard to alleged violation of SEBI Circular No. MIRSD/SE/Cir-19/2009 dated 03/12/2009, I note that in terms clause 12(d) of Annexure A, for the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations. In view of the outstanding obligation by Sthithi, the Noticee 1 could not be stated to have violated SEBI Circular No. MIRSD/SE/Cir-19/2009.

26. I also note the submission of Noticee 1 that for the Board to hold anything against a Broker, with respect to the trades of a client, a case has to be made out that the broker was aware of the 'illegitimacy' of the transaction of the client; a broker cannot be charged for a fraudulent / illegitimate trade of its client unless there is concrete evidence to prove that the Broker knew about the nature of the transaction or was a party to such transaction. As the material on record does not bring out any role of Noticee 1 in the actions of Sthithi or P Srikanth, I am of the view that violation of Section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c),

(d), Regulation 4(1) and Regulation 4(2) (g) of PFUTP Regulations is not established.

27. In view of the above, I find that Noticee 1 has violated Clauses A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of Brokers Regulations.

Issue No. II Whether Noticee 1, 2 and 3 had accepted the orders from person other than the Client in violation of Clauses A (1) and A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of Stock Brokers Regulations as alleged in the SCN?

28. Noticee 1 in its reply submitted that Sthithi was introduced by Mr. P Srikanth – Director of ZSL who approached Chennai Office of Noticee 1 for opening the client account. The account was opened through Authorized Representative of Sthithi at Chennai. Sthithi authorized the email address (srikanthp@zsl.com) as the official email address, wherein Noticee 1 used to send the digital contract notes. Further, Noticee 1 used to receive orders for execution through their board line number, and Noticee 1 did not have the facility of caller identification and recording of calls to identify the number(s) from which these calls were made. Noticee 1 also submitted the copies of Account opening form/KYC and authorization letter of Sthithi.

29. I have perused the Account opening form/KYC documents and authorization letter of Sthithi as submitted by the Noticee 1 and find that the account was opened through authorized representative of Sthithi, Mr. V. Viswanathan (then General Manager of ZSL). I find from the Account opening form that Noticee 1 was authorized to act on oral or written instructions of Mr. V. Viswanathan.

30. I note from the reply of Noticee 1 that Sthithi authorized the email address (srikanthp@zsl.com) as the official email address, wherein Noticee 1 used to send

the digital contract notes. I have perused a copy of letter dated 24/09/2010 submitted by Noticee 1 on issuance of digital contract note wherein Stithi has agreed that Noticee 1 shall provide digitally signed contract notes to the email-ID srikanthp@zsl.com , which belongs to Sthithi.

31. From the material on record, I find that while the persons authorized on behalf of Sthithi, as per the KYC documents was Mr. V. Viswanathan, the email address of P Srikanth is given as belonging to Sthithi, indicating that Sthithi was being represented by P Srikanth. Based on this, the gap I find in the KYC documents of Sthithi is lack of explicit authorization of P Srikanth, even though through the email-id, the documentation gives legitimacy to P Srikanth representing Sthithi. As far as conduct of the broker is concerned, this lacunae is not serious enough and not supported by any disagreement by the client as to its authorised representative to be considered a failure to act with with due care or maintain high standards of integrity. Hence, the violation of Clauses A (1) and A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of Stock Brokers Regulations by Noticee 1 is not established.

32. Noticee 2 registered the clients Srikant Sripriya (Sripriya) and Sthithi in May 2010 and May 2011. On perusal of KYC documents, I find that the telephone numbers mentioned by Sripriya are 044-28152849 and 9840092896 and that in case of Sthithi is 9840092896. The said mobile was used by P Srikanth, who is husband of Sripriya. Further, the Email ID mentioned in the KYC of these clients is srikanthp@zsl.co. In the consent letter dated 23/05/11 for receipt of ECN and other digital documents, Sthithi has authorized the emailed of srikanthp@zsl.com. The authorized signatory for Sthithi in the KYC documents is Mr. V. Viswanathan.

33. Noticee 2 stated that all contract notes for these clients were sent to the said email ID and all the orders were received from the said telephone numbers, and that the clients have never raising any dispute regarding the trades.

34. From the material on record, I am inclined to agree that in the case of Sripriya, Noticee 2 acted as per client instructions, considering that P Srikanth is husband of Sripriya and contact details given in KYC were of P Srikanth. In the case of Sthithi also, email and phone contact details given were of Srikanth. V Viswanathan is an authorized signatory for Sthithi. Based on this, the gap I find in the KYC documents of Sthithi is lack of explicit authorization of P Srikanth, even though through the email-id and mobile number, the documentation gives legitimacy to P Srikanth representing Sthithi. As far as conduct of the broker is concerned, this lacunae is not serious enough and not supported by any disagreement by the client as to its authorised representative to be considered a failure to act with with due care or maintain high standards of integrity. Hence, the violation of Clauses A (1) and A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of Stock Brokers Regulations by Noticee 2 is not established.

35. In the case of Noticee 3, Sripriya approached for opening an account for dealing in all the segments of the stock exchange(s) in May-2012, and her account was opened on May 12, 2012. Sripriya recorded her email id as sripriya.srikanth@gmail.com and mobile number as 9940114402 in KYC. All the contract notes and other communications from Noticee 3 were sent on the same email id and telephone number. The first trade in her account was placed on July 16, 2012 in the scrip of ZSL by P Srikanth. I note from the recording provided by the Noticee 3 that telecon was made to her registered mobile number on July 27, 2012 in order to reconfirm whether the client received confirmation of trades. In the said call, Sripriya confirmed that her husband P Srikanth was looking after her broking account.

36. I also take note of the submission by the Notice 3 that there was no statutory mandate for obtaining written authorization or preserving voice recording for order placement at the relevant point in time, and that clients normally authorize their immediate family member(s) to operate their bank, demat and broking accounts, and this practice is more common in case of husband and wife.

37. In view of the above, I find that violation of Clauses A (1) and A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of Stock Brokers Regulations by Noticee 3 is not established.

Issue No. III	If yes, whether the aforesaid violations would attract penalty under Section 15HA and 15HB of the SEBI Act? and
Issue No. VI	If yes, whether the aforesaid violations would attract penalty against Noticee 2 and 3 under Section 15HB of the SEBI Act?

38. As it is established that Noticee 1 failed to comply with Clauses A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of Stock Brokers Regulations, the Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act, text of which is reproduced as under:

<u>SEBI Act:</u>
<u>Penalty for contravention where no separate penalty has been provided.</u>
***15HB**. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

39. While determining the quantum of penalty under Section 15HB of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

40. From the material available on record, it is not possible to ascertain disproportionate gains or unfair advantage made by the Noticee 1 or the loss caused to investors caused to the investors by not acting with due skill, care and diligence in the conduct of its business. I note that the Noticee 1 has surrendered its certificate of registration in the year 2014. Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of ₹2,00,000/- (Rupees Two Lakh only) will be commensurate with the violations committed by the Noticee 1.

ORDER

41. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹2,00,000/- (Rupees Two Lakh only) upon the Noticee 1 i.e. M/s **Twentyfirst Century Shares and Securities Ltd**, under Section 15HB of the SEBI Act for violation of Clauses A (2) of the Code of Conduct for Brokers as specified under Schedule II read with Regulation 9 of Stock Brokers Regulations.

42. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

    ENFORCEMENT → Orders → Orders of AO → PAY NOW

43. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II of SEBI. The Noticees shall provide the following details while forwarding DD/ payment information:

    I. Name and PAN of the entity (Noticee)
    II. Name of the case / matter
    III. Purpose of Payment – Payment of penalty under AO proceedings
    IV. Bank Name and Account Number
    V. Transaction Number

44. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: May 28, 2020
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER