BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: ORDER/GR/RK/2022-23/24240)

UNDER SECTION 15 - I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 (HEREINAFTER REFERRED TO AS "SCRA, 1956") AND RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005, IN RESPECT OF:

Name of the Entity	Registration Number	PAN
SMIFS Ltd	**INZ000220635**	**AADCS7513E**

FACTS OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**), jointly with the Stock exchanges (NSE,BSE,MCX), had conducted inspection of documents and other records of SMIFS Ltd., (hereinafter referred to as "**Noticee/SMIFS**"), registered with SEBI as a Stock Broker having Registration Nos. INZ000220635, to verify the possible violation(s) of the provisions of the Securities and Exchange Board of India Act, 1992 **("SEBI Act")**, Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992 **("Brokers Regulations")** and Securities Contracts (Regulation) Act, 1956 (hereinafter, referred to as **"SCRA"**) by the Noticee. A copy of the findings of the Inspection Report has been shared with the Noticee.

2. Consequent upon the analysis of the finding of the inspection vis-a-vis the reply of the Noticee, it was allegedly observed the following:

a) Non –segregation of clients' funds.
b) Non-settlement of clients' accounts
c) Incorrect submission of data to exchange
d) Charging of excess turnover fee
e) Incorrect reporting of margin to exchange
f) Client funding
g) Discrepancies in email IDs and mobile numbers data of clients and;
h) Non-filing of CTR on time and not prompt of taking action with respect to resolving complaints of clients.

3. The aforesaid alleged conduct of the Noticee were in violation of the followings:
    a) Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.
    b) Clause 2.4.2, 2.6,3, 6.1.1(j) and 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
    c) SEBI press release -SEBI PR No. 24/2020 dated April 27, 2020 read with Clause A(2) & A(5) of the code of conduct r/w Regulation 9(f) of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992
    d) SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011
    e) Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017
    f) Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 - SMS and E-mail alerts to investors by stock exchanges
    g) Clause 2.10.2(a) of SEBI circular No. SEBI/HO/MIRSD/DOP/CIR/P/2019/113 dated 15 October 2019 by having failed to file the CTR with FIU
    h) Clause 3(xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.

4. In view of the above, adjudication proceeding was initiated under Section 15HB of the SEBI Act and Section 23D of Securities Contract Regulation Act against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

5. In this regard, the undersigned was appointed as the Adjudicating Officer **("AO")** by SEBI, vide order dated October 19, 2022, communicated vide communique dated October 27, 2022 under Sub-section 1 of Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure of Holding Inquire and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**) and Section 23-I of the Securities Contract Regulation Act,1956 (hereinafter referred to as **"SCRA"**) read with Rule 3 of the Securities Contract (Regulation) (Procedure for Holding Inquire and Imposing Penalties) Rules, 2005 to inquire into and adjudge under Section 15HB of the SEBI Act and Section 23D of the SCRA for the aforesaid alleged violations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Accordingly, a Show Cause Notice No. SEBI/HO/EAD/EAD4/P/OW/2023/0000000860/1 dated January 09, 2023 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4 of the Adjudication Rules, to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15HB of the SEBI Act, and Section 23D of the SCRA for the aforesaid alleged violations.

7. The said SCN was served on the Noticee via SPAD and vide email dated January 10, 2023. The proof of service is on record. Further, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, vide email dated February 09, 2023, hearing opportunity was granted to appear in person on February 15, 2023 which was delivered. The Director and the CFO cum Compliance Officer attended the said hearing in person and reiterated the submissions made earlier by the Noticee vide its letter dated February 01, 2023. The submissions made by the Noticee are summarized hereunder:
    a) Such instances of G being negative had been for non- reporting days and not on the Reporting days (i.e. the last working day of the week) and that it does not

have a proprietor trading and it also does not transact in Securities in the PRO Account.

b) It didn't resort to use credit balance of the client for the debit balance client and that there is no single investor complaint against it for non-payment against credit balance or misuse of funds or collateral.

c) ICICI Bank is the Clearing Banker and they also act as the Professional Clearing Member (PCM) in respect of the securities transactions executed in Equity Derivative Segment and Currency Derivative Segment and the balances maintained with the PCM Division are inter–se transferred between the designated Bank Accounts maintained with ICICI Bank for their Internal Compliances and controls.

d) It has availed an overdraft facility to maintain adequate balances with the PCM Division and that the requisite Funds are deposited with the PCM Division and the Compliances of "G" Factor is met at all material times in a LIVE Market scenario. However, due to the internal Compliances and controls of the Banking Division and PCM Division of ICICI Bank Limited, the said facility is not kept Open overnight and the same is closed at the End of the Day and the same is again restored on the next working day before the beginning of the LIVE Market session.

e) It has maintained Deposits with PCM consistently during LIVE market session ensuring that there is no shortage of funds and that the shortfall amount appears to be a Technical Matter wherein the PCM Division and the Banking Division transfer funds between themselves for their Internal Compliances.

f) The fund movement observed between the said Bank accounts and the designated Client Bank Accounts 000803340003956 (HDFC Bank Ltd.) and 000605032366 (ICICI Bank Ltd.) of the stock broking division are due to the margin and/or pay-in Obligations for the trade and investment being done by the fund Manager/portfolio manager under its specific strategy/scheme code on behalf of its registered PMS Clients.

g) Further, Noticee vide letter dated February 23, 2023, has stated that necessary corrective actions has already been taken on the same and also specifically stated that since the visit of the inspection team in September 2021, ‘G’ has been maintained positive on all the days.

h) It was operational through skeletal staff members and that dealing officer of the settlement desk was facing severe health challenges.

i) Delay in settlement of account of the client (UCC- 53774) was due to the fact that the said client was an NRI client and it had received a dividend of Rs.9,12,000/- on the margin of the said client and the same was to be credited into the NRO account of the client and that due to outbreak of pandemic, the cheque issued to the said client was sent to Mumbai for clearing, since it was a NRO account and that only designated branches deal in the transaction related to NRI accounts and further that the said client had instructed to not credit the proceeds of the aforesaid amount into his NRO account as it would lead to some accounting problem which ultimately led to the delay in settlement of the said account.

j) One of its clients Castle Distributors had defaulted in paying the amount due to it, during covid period. Accordingly, it had approached the promoted director Rahul Kayan who in turn approached the aforesaid two clients for the funds due to the exchange. It was owing to this reason, the accounts of the aforesaid two clients were not settled who heeded to the request of the Noticee to retain funds to meet the pay-out obligation of the Noticee.

k) It collects interest on the debit amounts for the delays in default of payments by the clients which is in consonance with the agreement between the Notice and its clients at the time of account opening. It is because of this levy of interest which led to the debit in the accounts of the Noticee.

l) With regard to incorrect submission of data to exchange, the Noticee submitted the following:

    - It had inadvertently taken bank balance of account No ‘57500000277810’ as Rs.1000064.30 instead of Rs.64.30.
    - On few instances, the dealing officer of the Noticee had tagged un-cleared cheques as cleared which lead to the overstatement and understatement in those instances.

- It had a deposit with Calcutta stock Exchange of Rs.14,50,000/- in the form of cash. As the said exchange is inactive, the Noticee was under an impression that the said deposit was towards Additional Base capital instead of Base Minimum capital and the same was not considered while submitting to SEBI. Similarly, a deposit of Rs.2,00,000/- with MCX was towards Base Minimum Capital and the same was also not reckoned while submission which ultimately led to the difference.
- The Noticee had maintained a fixed deposit of Rs.3 crores as a collateral deposit with PCM for clearing its settlement obligations. The said amount was mistakenly considered to be the partially funded bank guarantee by its dealing officer.
- It also submitted that there had been mismatches for only 24 data points instead of 59 data points.
- It had not siphoned off and/or diverted any client fund to any related party entities and that it does not transact in securities in the PRO account since it is not having a proprietary desk.
- The back office master could not be updated in time on account of shortage of manpower and it skipped the attention of the dealing officer owing to which it erroneously debited amount to the tune of Rs.1,79,416.88/- had been refunded back to all the clients who had traded for that period.

m) It had correctly reported the margin collected from its clients to the exchanges at all times and that margin requirement as alleged in the SCN based on the annexure provided materially differs from the actual margin requirements provided by NSE in their MG-13 reports.

n) The value of the collateral provided by the Noticee materially differs from the calculation provided by the inspecting team in the IR and that the violation of the SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011 is not correct since the clause 5 & 6 of the aforesaid circular were rescinded by the SEBI circular No. CIR/HO/MIRSD/DOP/CIR/P/2019/88 dated August 01, 2019 and are accordingly not applicable to the instant finding of the observations detailed in the annexure to the SCN.

o) Noticee does not provide further exposure to the clients when debit balance arises out of client's failure to pay the required amount and such debit balance has continued beyond the fifth trading day.

p) That the NSE circular dated May 08, 2015 enables brokers including Noticee to grant further exposure to the clients beyond fifth trading day reckoned from pay-in date to the extent availability of excess of client's fully paid up securities over its debit balance, deposited with it.

q) Two of its clients (father and son) had the same email ID and that one of them had requested to liquidate the Mutual fund units. But the dealing officer liquidated the units of the other clients instead of the intended client. Noticee in order to make good the loss to the client bought back the said units. This action ultimately led to the appearance of funding to the client.

r) In some instances of funding appeared due to the exposure granted by it in terms of the aforesaid NSE circular.

s) One of its clients had wrongly deposited cash into the account on the dates mentioned in the table above. Later on, the said client had filed a complaint on SEBI Scores portal and accordingly, the complaint was taken by BSE for resolution and in response the Noticee submitted to BSE that the cash deposited by the client could only be given by Court order or only upon the specific direction of SEBI/stock exchanges.

8. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been duly followed in the matter by granting the Noticee, an opportunity for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and replies submitted by the Noticee.

<u>CONSIDERATION OF ISSUES AND FINDINGS:</u> -

9. I have carefully perused the charges levelled against the Noticee and the documents / material available on record. The issues that arise for consideration in the present case are:

   Issue No. I: Whether Noticee has violated the aforesaid provisions of SEBI Circulars, Broker's Regulations and SEBI press as mentioned at para 3 above?

   Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act and Section 23D of SCRA, as applicable?

   Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act and Section 23J of SCRA?

10. Before proceeding further, I would like to refer to the relevant provisions of law as under:

    <u>Relevant provisions of Regulation 9 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.</u>

    <u>Conditions of registration.9.</u> *Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,*
    -(a) the stock broker holds the membership of any stock exchange;
    (b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;
    (c) where the stock broker proposes change in control, he shall obtain prior approval of the Board for continuing to act as such after the change;

(d) he shall pay fees charged by the Board in the manner provided in these regulations;

(e) he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;

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

(g) he shall at all times maintain the minimum networth as specified in Schedule VI.

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(h) Every stock broker who act as an underwriter shall enter into a valid agreement with the body corporate on whose behalf it is acting as underwriter and shall abide by the regulations made under the Act in respect of the activities carried on by it as underwriter. (i) Every Stock Broker shall be entitled to act as an underwriter only out of its own net worth/funds as may be prescribed from time to time.]

Circulars

Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993

Relevant provisions are specified under the below mentioned link:

https://www.sebi.gov.in/legal/circulars/nov-1993/regulation-of-transactions-between-clients-and-brokers_19445.html

Clause 2.4.2 ,2.6,3, 6.1.1(j) and 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Relevant provisions are specified under the below mentioned link:

https://www.sebi.gov.in/legal/circulars/sep-2016/enhanced-supervision-of-stock-brokers-and-depository-participants_33334.html

SEBI PR No. 24/2020 dated April 27, 2020

Relevant provisions are specified under the below mentioned link:
https://www.sebi.gov.in/media/press-releases/apr-2020/sebi-reduces-broker-turnover-fees-and-filing-fees-for-issuers_46571.html

SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011 - Short-collection/Non-collection of client margins (Derivatives Segments)

Relevant provisions are specified under the below mentioned link:

https://www.sebi.gov.in/legal/circulars/aug-2011/short-collection-non-collection-of-client-margins-derivatives-segments-_20439.html

Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017

Relevant provisions are specified under the below mentioned link:

https://www.sebi.gov.in/legal/circulars/jun-2017/clarification-to-enhanced-supervision-circular_35165.html

Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 - SMS and E-mail alerts to investors by stock exchanges

Relevant provisions are specified under the below mentioned link:

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

Clause 2.10.2(a) of SEBI circular No. SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated 15 October 2019 by having failed to file the CTR with FIU

Relevant provisions are specified under the below mentioned link:
https://www.sebi.gov.in/legal/master-circulars/oct-2019/guidelines-on-anti-money-laundering-aml-standards-and-combating-the-financing-of-terrorism-cft-obligations-of-securities-market-intermediaries-under-the-prevention-of-money-laundering-act-2002-a-_44657.html

Clause 3(xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016

Relevant provisions are specified under the below mentioned link:
https://www.sebi.gov.in/sebi_data/attachdocs/1473243582335.pdf

Relevant provisions of Regulation 9 of 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; and (g) he shall at all times maintain the minimum networth as specified in Schedule VI. 30*

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

A. General.

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

(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*

Relevant provisions of SEBI Act, 1992

Power to adjudicate.

15-I.

(1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G,15H, 15HA and 15HB, the Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

Relevant provisions of SCRA, 1956

Power to adjudicate.

23-I. *(1) For the purpose of adjudging under sections 23A, 23B, 23C, 23D, 23E, 23F,23G and 23H, the Securities and Exchange Board of India [134][may] appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.*

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

(3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 23L, whichever is earlier.

Issue No. I: Whether Noticee has violated the aforesaid provisions of SEBI Circulars, Broker's Regulations and SEBI press as mentioned at para 3 above?

Alleged violation 1: Non-segregation of clients' funds

11. With respect to the captioned allegation, I note from the inspection report (hereinafter referred to as IR) that the total funds available with the Noticee (i.e. cash and cash equivalents with the Noticee and with the clearing member/clearing corporation) was less than the ledger credit balance of clients (viz. G negative) on 34 instances out of total 43 trading days in September 2020 & March 2021 combined (18 days in

September 2020 and 16 days in March 2021). It is further observed from IR that for September 2020, out of 18 ‘G’ negative instances, ‘G’ is negative in the range of a minimum of Rs.24 lacs and a maximum of Rs.20 crores and that the quantum of ‘G’ negative is less than a crore on 2 occasions and for the remaining 16 occasions, it is more than a crore. In addition to this, it is observed that for March 2021, ‘G’ is negative in the range of a minimum of Rs.11 crores to a maximum of Rs.99 crores. Further, the value of ‘J’ was positive on 1 instance in September 2020.

12. In this regard, the Noticee made a submission that such instances of ‘G’ being negative had been for non-reporting days and not on the reporting days (i.e. the last working day of the week) and that it does not have a proprietor trading and it also does not transact in securities in the PRO Account. Noticee further submitted that it didn’t resort to use credit balance of the client for the debit balance client and that there is no single investor complaint against it for non-payment against credit balance or misuse of funds or collateral.

13. Noticee further added that ICICI Bank is the Clearing Banker and they also act as the Professional Clearing Member (PCM) in respect of the securities transactions executed in Equity Derivative Segment and Currency Derivative Segment and the balances maintained with the PCM Division are *inter–se* transferred between the designated Bank Accounts maintained with ICICI Bank for their internal compliances and controls. Noticee also submitted that it has availed an overdraft facility to maintain adequate balances with the PCM Division and that the requisite funds are deposited with the PCM Division and the Compliances of “G” factor is met at all material times in a live Market scenario. However, due to the internal Compliances and controls of the Banking Division and PCM Division of ICICI Bank Limited, the said facility is not kept open overnight and the same is closed at the End of the Day and the same is again restored on the next working day before the beginning of the live Market session. It further added that it has maintained deposits with PCM consistently during live market session ensuring that there is no shortage of funds. Noticee further stated that the shortfall amount appears to be a technical matter wherein the PCM Division and

the Banking Division transfer funds between themselves for their internal compliances.

14. With regard to the Noticee's aforesaid submission, I note that Noticee has admittedly failed to maintain 'G' positive on non-reporting days. In this regard, it is to be noted that SEBI circular on enhanced supervision does not grant relaxation on 'G' being negative on non-reporting days. Further, as regards its submission that the shortfall in the funds appears to be a technical matter owing to the fact that the overdraft facility availed by it was not available during off-market hours, I find it devoid of merits since despite several measures, 'G' has been negative and it was the responsibility of the Noticee to keep robust risk management by keeping 'G' positive on all days.

15. Further, I note that even for argument's sake if the aforesaid submission of maintaining 3 crore collateral with PCM for clearing and settlement obligation, the part of which has been taken for bank guarantee and also having overdraft facility with bank for meeting the shortfalls and having clearing and PCM account with same branch is accepted, it does not absolve the violation on the part of the Noticee as the range of mis-use of funds in this regard (Rs.24 lacs to Rs.99 crores) is a huge amount. The fact that the value of 'G' being negative in respect of 34 out of 43 instances as verified during the inspection and as alleged in the SCN, clearly indicates that the Noticee has mis-utilized the credit balance clients' funds towards meeting the settlement obligations of its debit balance clients to the extent of negative 'G', which is prohibited under the provisions of the Enhanced supervision circular dated September 26, 2016, SEBI Circular dated November 18, 1993 and also under the requirements stipulated under Section 23D of SCRA. It is important to note that the amount of mis-utilization of credit balance client funds ranged between Rs.24 lacs to Rs.99 crores during the period of inspection. In this regard, it is pertinent to mention the following judgement of the Hon'ble Securities Appellate Tribunal (Hon'ble 'SAT') in Samco Securities Ltd. vs SEBI (Appeal No. 493 of 2021decided on March 30, 2022), wherein Hon'ble SAT held as under:-

“We find that mis-utilization of the clients’ credit funds is a grave issue and not in the interest of the securities market. A stockbroker has to treat each of its client as separate and independent entity and ensure that each clients’ accounts are settled separately and individually. In this regard, the appellant was statutorily obliged to abide by the directions issued under the SEBI circulars dated November 18, 1993 and September 26, 2016.”

In view of the aforesaid, I hold that the Noticee has mis-utilized the funds of its credit balance clients for the purpose of settlement/ margin obligations of debit balance clients, and hence violated that provisions of Section 23D of SCRA read with clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/ CIR/P/2016/95 dated September 26, 2016.

16. I further note from IR that the Noticee had maintained two bank accounts i.e. 000605034582 (ICICI Bank Ltd) and 00080340058403 (HDFC Bank Ltd) which are categorized as SMIFS Ltd Client A/c. Noticee in this regard submitted to the inspecting team that as it provides portfolio management service (PMS) to its clients, the aforesaid bank accounts were used for the PMS Service. In this regard, I note from IR that there were fund transfers between the above two bank accounts with the Noticee’s client bank a/c i.e. 000803340003956 (HDFC Bank Ltd) and 000605032366 (ICICI Bank Ltd) maintained for the purpose of broking activities, which is in violation of provisions of Regulation 23 (5) of SEBI (Portfolio Managers) Regulations, 2020 which stipulates that *“The portfolio manager shall keep the funds of all clients in a separate account to be maintained by it in a Scheduled commercial Bank”.*

17. With regard to the aforesaid, Noticee submitted that fund movement observed between the said bank accounts and the designated Client Bank Accounts 000803340003956 (HDFC Bank Ltd.) and 000605032366 (ICICI Bank Ltd.) of the stock broking division are due to the margin and/or pay-in obligations for the trade and investment being done by the fund manager/portfolio manager under its specific

strategy/scheme code on behalf of its registered PMS clients. Further, Noticee vide letter dated February 23, 2023, has stated that necessary corrective actions have already been taken on the same and also specifically stated that since the visit of the inspection team in September 2021, 'G' has been maintained positive on all the days.

18. I have considered the allegations levelled against the Noticee, the reply/submissions of the Noticee and the relevant material available on record. In this case, it is relevant to mention that instant proceedings have been initiated based upon the observation that the Noticee had not complied with the requirements of 1993 Circular. It is noted that the 1993 Circular lays down several exclusive requirements. One of the laid down requirements under Clause D of the 1993 Circular as applicable in this case is that – *"....No money shall be drawn from clients 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 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"*.

    In terms of the said Circular, the stock broker is mandated not only to keep separate accounts for clients' and own dealings but also to not to withdraw money from clients' account except in the situations permitted thereunder. The said Circular does not permit using excess funds of one client to meet liability of another client.

19. In order to determine whether the Noticee has utilized clients' funds for purposes other than those permitted as stipulated in 1993 circular, the principle specified in SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/138 dated December 20, 2016 has been applied such that the total available funds i.e. day end balance in all clients bank accounts (A), cash and cash equivalents with the stock broker and with the exchange / clearing corporation/ clearing member (B), should always be equal to or greater than clients' funds as per ledger balance (C) and if [(A+B) –C = G] is negative, then it indicates that the credit balance clients' funds have been misused by the stock broker for its own purposes or for settlement obligations of debit balance clients.

20. In this case, it has been specifically found in the inspection report that the total of clients' funds (available in bank accounts, cash / cash equivalent deposits with exchange / clearing corporation / clearing member) available with the Noticee for 34 out of 43 sample dates were lesser than the total credit balance of all clients of the Noticee. The inspection report has categorically brought out that the said mismatch between the clients' funds available with the Noticee and the total credit balance of clients indicate that funds of the clients with credit balance were being used for meeting obligations of clients with debit balance, which is not permissible in terms of the 1993 Circular. From the observations made by the inspection, I further note that the difference between the clients' funds available with the Noticee i.e. (A+B) and the total credit balance of clients i.e. (C) range from 24 lacs to 99 crore.

21. I note that the 1993 Circular mandates strict segregation of clients' funds and securities from own funds and securities. The principle of segregation ensures adequate ring fencing of clients' assets from own funds and securities so that even if the own funds and securities are stressed, the client funds and securities will be protected.

22. I further note that the segregation of clients' funds for use of brokers' own funds and other clients' funds and prohibition of use of funds of clients for other clients or for own purpose aim towards instilling confidence amongst the investors that their funds shall not be mis-utilized.

23. I find from the material available on record that the Noticee has misused the clients' funds on several occasions for debit balance clients and thereby failed in performing its duties as a registered stock broker and also failed to adhere to high standards of service to its clients. It is, therefore, the alleged violation of the provisions of Clause 1 of Annexure of SEBI Circular SMD/ SED/ CIR/ 93/ 23321 dated 18 Nov, 1993 and clause 2.4.2 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 as against the Noticee stands established.

Alleged violation 2: Non-settlement of clients' accounts.

24. In terms of para 8.1.1 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, there must be a gap of 90/30 days (as per the choice of clients viz quarterly/monthly) between two running account settlements. However, I note from IR that there were following instances where the gap between two consecutive settlements was more than 90 days. The details of such instances are given in Table 1 below:

Table 1:

Client Name	UCC	Date of settlement	Date of next settlement	No of days
AVINASH VAZIRANI	53774	01/09/2020	06/01/2021	127
SABA SHAIBAZ PATANWALA	65117	22/06/2020	30/09/2020	100
PRIYA GOLCHHA	28040	30/06/2020	14/10/2020	106
SANJAY GOLCHHA	27235	NA	30/09/2020	NA
SMIFS LTD	31011	07/04/2020	29/09/2020	175

25. With regard to the aforesaid, Noticee submitted that during COVID, it was operational through skeletal staff members and that dealing officer of the settlement desk was facing severe health challenges. Noticee further submitted that delay in settlement of account of the client (UCC- 53774) was due to the fact that the said client was an NRI client and Noticee had received a dividend of Rs.9,12,000/- on the margin of the said client and the same was to be credited into the NRO account of the client. Noticee further submitted that due to outbreak of pandemic, the cheque issued to the said client was sent to Mumbai for clearing, since it was a NRO account and that only designated branches deal in the transaction related to NRI accounts. Noticee further added that the said client had instructed to not credit the proceeds of the aforesaid amount into his NRO account as it would lead to some accounting problem which ultimately led to the delay in settlement of the said account. Similarly, with regard to the settlement of accounts of clients (UCC-28040) and (UCC-27235) (mother-in-law and father-in-law respectively of the promoter director of the Noticee and also the shareholders of the Noticee), Noticee submitted that one of its clients Castle Distributors had defaulted in paying the amount due to it, during covid period.

Accordingly, Noticee approached the promoted director Rahul Kayan who in turn approached the aforesaid two clients for the funds due to the exchange. It was owing to this reason, the accounts of the aforesaid two clients were not settled who heeded to the request of the Noticee to retain funds to meet the pay-out obligation of the Noticee.

26. With regards to the above submission of the Noticee, I note that there is no provision of law which excludes the accounts of promoters/directors/shareholders ('PDS') from being settled, as contented by the Noticee. There is also no provision of law which allows the Noticee to treat its clients in group i.e. family members as a group, where settlement could not be done due to debit balance of clients amongst the group. The provisions given under clause 12 of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, clearly states that 'there shall be no inter-client adjustments for the purpose of settlement of the 'running account'. In this regard, I note that during the inspection period, the total amount of funds not settled by the Noticee was Rs.1.26 crore, which is significantly huge amount to ignore the violations of the Noticee. The Noticee had further submitted that the clients have never raised any query regarding the non-settlement of the accounts. As a SEBI registered intermediary, it is the duty of the Noticee to comply with all the directives of SEBI including settlement of funds and securities of the clients. The Noticee cannot absolve itself from the violation by placing reliance on the reason/statement that no complaint was made by any investor in this regard. Further, it is an admitted fact by the Noticee that in respect of certain accounts, the Noticee settled the funds in the subsequent quarter instead of the required quarter. The reply of the Noticee in the context of the said charges/violations also show the tacit admission on its part w.r.t the said charges/allegations. Therefore, the submissions of the Noticee cannot be accepted.

27. Further, with regards to settlement of account of client, Avinash Vazirani (UCC 53774), the Noticee stated that it is a settlement of pending dividend on corporate action and not the sale transaction of the said client. The Noticee also submitted that since it was a delay in settlement on the sole discretion of client, the amount was transferred to

separate Client Bank Account (wherever the fund settlement is delayed for reason related to clients) maintained with ICICI Bank, A/c No. 000605033888.

28. In this regard, it is noted that the said account is a separate account apart from the other client bank accounts which were part of the inspection for calculation of 'G'. In this connection, during the hearing, it was stated that the said account was not taken into consideration for calculation of 'G', it being a separate account maintained for aforesaid reasons. From the account statement of the said ICICI account for the period April 1, 2020 to March 31, 2021, it is noted that there were many credits (which might have been transferred from the PMS or Broker client accounts) and there were only two debit transaction that too w.r.t. amount transferred to broker account i.e. SMIFS Ltd.. Further, it is also noted that there is no indication that the amount was transferred back to the respective clients as it belongs to the said clients whose funds were not settled on their discretion. As per the statement of the aforesaid bank account, the amount outstanding was to the tune of Rs.43,50,732.05/- as on July 31, 2021. It is therefore from the said facts, it is clear that the Noticee admittedly failed to timely settle the aforesaid accounts and neither exchange nor SEBI grant any relaxation related to non-settlement of the accounts.

29. In addition to the above, I also note from IR that in terms of para 8.1.5 of the aforesaid circular, the Noticee was required to send retention statements to its clients within five days from the date of settlement of account. However, in following instances I note that the retention statements have been sent after five days. The details are mentioned in Table 2 below:

Table 2:

SL No.	Name of the client	UCC	Date of running account settlement	Date of communication to client	Difference in days
1	Palki Fashion Private Ltd	70004270	29/10/2020	04/12/2020	36
2	Nbi Industrial Finance Co. Ltd	28761	01/06/2021	09/06/2021	8

3	Shree Tulsi Realty Private Limited	75087	12/11/2020	25/11/2020	13
4	Deepak Kumar Shroff	75151	22/10/2020	28/11/2020	37
6	Gita Devi Agarwal	75033	15/10/2020	04/12/2020	50
7	Sarita Kanodia	71090	12/11/2020	25/11/2020	13
8	Manakrishna Investments Pvt Ltd	28996	19/10/2020	04/12/2020	46
9	Ashok Bhandari	28436	02/09/2020	09/09/2020	7
10	Suvarnaar Agarwal	28254	10/11/2020	25/11/2020	15
11	Shivkripa Leasing & Investments P. Ltd	13141	22/10/2020	28/11/2020	37
12	Sudha Commercial Company Limited	13060	09/04/2020	15/04/2020	6

30. With regard to the aforesaid, Noticee submitted that due to outbreak of pandemic, it was operating through skeletal staff and that the dealing officer was facing severe health challenges and that there had been a delay in sending the retention statements but it had never been the case that no retention statement was provided to the clients. In this regard, I note that notice admittedly delayed the settlement of the retention statements to the clients as against mandated by the SEBI circular.

31. Similarly, with respect to the balance of all inactive clients as on June 30, 2020, September 30, 2020, December 31, 2020 and March 31, 2021, I note from IR that there were instances of opening debit and credit balance with the Noticee in each quarter, which were carried forwarded to the end of the next quarter. I further note from IR that the Noticee did not settle the clients fund balance as on the end of the subsequent quarter and there were instances where the Noticee had made debit transactions even if that particular client was having opening debit balance. Further, there were instances where a particular client has made huge debit as well as credit transaction in a particular quarter and the client has not taken any exposure/position with the Noticee.

32. In view of the above, it is observed that across 4 quarters, 30 inactive clients' accounts were not settled and total amount of non-settlement is Rs.1.26 crores and average amount of non-settlement across 4 quarters is Rs.31.55 lakh.

33. As regards aforesaid, Noticee made a submission that as per its internal policy, it collects interest on the debit amounts for the delays in default of payments by the clients which is in consonance with the agreement between the Noticee and its clients at the time of account opening. It is because of this levy of interest which led to the debit in the accounts of the Noticee. However, Noticee failed to provide any documentary evidence in support of the aforesaid claim. So, the aforesaid submission of the Noticee is bereft of merits.

34. Accordingly, I find that the Noticee has violated the provisions of Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Alleged violation 3: Incorrect submission of data to exchange

35. With regard to the captioned allegation, I note from IR that there was a discrepancy between the weekly data submitted to the exchanges and the Preliminary Inspection Questionnaire (PIQ) data submitted to SEBI for Sep 2020 & March 2021 (for the 8 days pertaining to weekly data submission to exchange).

36. The data points viz. A, B, C, G, D, E, F, P, MC, MF were compared for 8 days for data submitted to the exchange vis-à-vis data submitted in PIQ and following observations were made:

    Out of 80 data points (10 data points * 8 days),
    No. of overstatement to Exchange = 29
    No. of understatement to Exchange = 30
    Data match = 21
    Total = 80

37. In this regard, Noticee submitted that the generally, its Internal auditor verifies each and every data before submission to the stock exchanges. However, due to the outbreak of global pandemic, the said internal auditor faced hardships to verify the data before submission to the exchange due to lack of manpower and that the mismatch of data submitted to the exchange and to SEBI was due to the following reasons:

    a) Noticee had inadvertently taken bank balance of account No '57500000277810' as Rs.1000064.30/- instead of Rs.64.30/-.
    b) On few instances, the dealing officer of the Noticee had tagged un-cleared cheques as cleared which lead to the overstatement and understatement in those instances.
    c) Noticee had a deposit with Calcutta stock Exchange of Rs.14,50,000/- in the form of cash. As the said exchange is inactive, the Noticee was under an impression that the said deposit was towards Additional Base capital instead of Base Minimum capital and the same was not considered while submitting to SEBI. Similarly, a deposit of Rs.2,00,000/- with MCX was towards Base Minimum Capital and the same was also not reckoned while submission which ultimately led to the difference.
    d) The Noticee had maintained a fixed deposit of Rs.3 crores as a collateral deposit with PCM for clearing its settlement obligations. The said amount was mistakenly considered to be the partially funded bank guarantee by its dealing officer.
    e) Noticee also submitted that there had been mismatches for 24 data points. The Noticee further added that it had not siphoned off and/or diverted any client fund to any related party entities and that it does not transact in securities in the PRO account since it is not having a proprietary desk.

38. The aforesaid instances show that Noticee had on many instances admittedly submitted wrong data to the exchange which led to the overstatement and understatement in the said instances.

39. Accordingly, the above facts establish that the Noticee has violated the provisions of 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Alleged violation 4: Charging of excess turnover fee

40. As regards to the captioned allegation, I note from IR that the broker turnover fee was reduced to 50% for the period June 2020 to March 2021 vide SEBI Press release dated April 27, 2020 with a direction to pass on the benefit of the above reduction in fees to the investors. However, the Noticee failed to pass on the said benefit to the investors.

41. In this regards, Noticee submitted that due to the pandemic, the back office master could not be updated in time on account of shortage of manpower and it skipped the attention of the dealing officer. It further submitted that the erroneously debited amount to the tune of Rs.1,79,416.88/- had been refunded back to all the clients who had traded for that period. However, I note that the Noticee didn't provide its bank account statement or that of the clients to substantiate its claim of having refunded the amount. The Noticee only submitted an excel sheet showing the aforesaid credit without supported by any bank statement.

42. In view of the aforesaid, I note that the Noticee has admittedly violated the provisions of SEBI PR No. 24/2020 dated April 27, 2020 read with Clause A(2) & A(5) of the code of conduct, read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations,1992.

Alleged violation 5: Incorrect reporting of margin to exchange

43. I note from IR that there was incorrect reporting of margin shortfall to the tune of Rs.3,56,042.08, Rs.4,56,677.37 and Rs.68,750 in Cash Market, Futures & Options and Currency Derivatives segment respectively by the Noticee to NSE. I further note from IR that the Noticee had in 53 out of 225 instances reported incorrect margin of its clients to MCX. In view of the same, the Noticee was alleged to have violated the

provisions of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011 (for NSE) and Clause 3(xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016 (for MCX).

44. In this regard, Noticee submitted that it had correctly reported the margin collected from its clients to the exchanges at all times and that margin requirement as alleged in the SCN materially differs from the actual margin requirements provided by NSE in their MG-13 reports and the value of collateral collected by the Noticee also materially differs from the calculations provided by the Inspection team in the IR. Noticee further submitted that it had requested for the detailed working regarding the collateral valuation carried out by the Inspecting team, basis which shortfall amount as alleged was calculated and the same was not provided to it till date. It further added that the value of the collateral provided by the Noticee also materially differs from the calculation provided by the inspecting team in the IR and that the violation of the SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011 is not correct since the clause 5 & 6 of the aforesaid circular were rescinded by the SEBI circular No. CIR/HO/MIRSD/DOP/CIR/P/2019/88 dated August 01, 2019 and are accordingly not applicable to the instant finding of the observations detailed in the annexure to the SCN.

45. In this regard, I note from the IR that the similar submissions were made during the inspection and as the said claim was not supported by any documentary evidence, the margin shortfall was confirmed by the exchange and accordingly it was alleged that there was incorrect reporting of margin. Similarly, I note that the current submissions have also been made without any supporting documents except an excel sheet working on the same. In view of the same, the aforesaid contentions of the Noticee are not tenable.

With regards to the submission of the Noticee that the SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011 is not applicable as the clause 5 & 6 of the aforesaid circular were rescinded by the SEBI circular No.

CIR/HO/MIRSD/DOP/CIR/P/2019/88 dated August 01, 2019, I note that the said circular dated August 01, 2019 is on 'Rationalization of imposition of fines for false/incorrect reporting of margins or non-reporting of margins by Trading Member/Clearing Member in all segments' relating to the fines to be collected by the exchanges for false/incorrect and non-reporting of margins. I further note that the said circular didn't repeal the requirement of reporting correct margin by the trading members to the exchanges. It only changed the methodology of imposing fine upon the trading member on non-compliance. Accordingly, I find no merit in the said submission of the Noticee.

46. In view of the above, it stands established that the Noticee has violated the provisions of SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011.

Alleged violation 7: Client funding

47. With regard to the captioned allegation, I note from IR that the Noticee funded clients beyond T+2+5 days in 2 sample instances in NSE and 1 in MCX. The amount of said funding in case of 2 instances in NSE was Rs.30.97 Lakhs. Further, with regard to MCX observation, I note from IR that the Noticee had funded client having client code-61071 despite having debit balance for the period June 22, 2020 to December 03, 2020 and January 05, 2021 to March 30, 2021.

48. In this regard, Noticee submitted that it does not provide further exposure to the clients when debit balance arose out of client's failure to pay the required amount and such debit balance has continued beyond the fifth trading day. Noticee further submitted that the NSE circular dated May 08, 2015 enable brokers including Noticee to grant further exposure to the clients beyond fifth trading day reckoned from pay-in date to the extent availability of excess of client's fully paid up securities over its debit balance, deposited with it and that in some cases the instances of funding appeared due to the exposure granted to it in terms of the aforesaid NSE circular. Noticee also submitted that two of its clients (father and son) had the same email ID and that one of them had

requested to liquidate the Mutual fund units. But the dealing officer liquidated the units of the other clients instead of the intended client. Noticee in order to make good the loss to the client bought back the said units. This action ultimately led to the appearance of funding to the client.

49. In this regard, I note that the SEBI circular on the Enhanced supervision dated September 26, 2016, wherein para 2.6 clearly states that "stock brokers shall not grant further exposure to the client when debit balances arise out of clients' failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay in". I note that the said SEBI circular dated September 26, 2016 was issued subsequent to the NSE circular dated May 08, 2015 relied upon by the Noticee and accordingly the SEBI circular prevails on the date of the aforesaid violations by the Noticee. Further, I note that it is an admitted mistake on the part of the Noticee with regards to wrong redemption of mutual fund units and subsequent buying back of the same, which resulted in funding to the client. I also note that the said submission was also not made to the inspection team of SEBI, clearly indicating it to be an afterthought.

50. In view of the aforesaid, it stands established that the Noticee has violated the provisions of Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

Alleged violation 8: Discrepancies in e-mail ids and Mobile Numbers data of clients

51. It was alleged in the SCN that during the inspection, on verification of the UCC database of the exchange and Noticee's back office records, it was observed that there was mismatch in the email ids of 25 clients and the mobile number of 4 clients. Further, it was observed that the Noticee had not uploaded the mobile number of 2 clients on the BSE UCC database.

52. With regard to the aforesaid, Noticee submitted that due to outbreak of pandemic, it was operating through skeletal staff and that the dealing officer of the KYC department including a dozen staff members were facing severe health challenges and such instances are the result of lapses occurred during the pandemic. Noticee further submitted that it has taken the corrective measures in this regard.

53. In this regard, I note that the Noticee has admitted to the aforesaid findings of the inspection. In view of the above, it is established that the Noticee has violated the provisions of Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

Alleged violation 9: Non-filing of CTR & laxity observed w.r.t resolving complaints

54. I further note from IR that a scores complaint vide ref. no. SEBIE/OR21/0000008/1 dated January 04, 2021 was received by SEBI which was regarding refund of cash deposit in Noticee's account directly by the client/complainant. The details of such cash deposits by the clients are mentioned in the table below:

Date	Events
December 03, 2020	Rs.50000/- cash deposited by Client Mr. Debendra Kumar Pradhan UCC: 66677, in the Client Bank Account No. 005010200038818 of AXIS Bank Ltd.
December 04, 2020	Rs.80000/- cash deposited by Client Mr. Debendra Kumar Pradhan UCC: 66677, in the Client Bank Account No. 005010200038818 of AXIS Bank Ltd.
December 05, 2020	Rs.60000/- cash deposited by Client Mr. Debendra Kumar Pradhan UCC: 66677, in the Client Bank Account No. 005010200038818 of AXIS Bank Ltd.
December 23, 2020	The Cash deposited in the said account was tracked by the dealing officer during the routine Bank reconciliation and was transferred to the designated ICICI Bank Account No. 000605033888 on 23.12.2020.
January 04, 2021	Client had complained before SEBI, SCORES - Ref. SEBIE/OR21/000008/1.

55. In this regard, Noticee submitted that one of its clients had wrongly deposited cash into the account on the dates mentioned in the table above. Later on, the said client had filed a complaint on SEBI Scores portal and accordingly, the complaint was taken

by BSE for resolution. The Noticee further submitted that it responded to BSE that the cash deposited by the client could only be given by Court order or only upon the specific direction of SEBI/stock exchanges and therefore Noticee delayed the filing of CTR and ultimately filed the CTR on dated May 18,2022.

56. With regard to the aforesaid submission of the Noticee, I note that the due date for filing CTR was January 15, 2021 whereas the Noticee did not report the information relating to the said cash transactions to the Director, Financial Intelligence Unit-India(FIU) by the said date and the same was not denied by the Noticee. In view of the aforesaid, I hold that the Noticee has violated the provisions of Clause 2.10.2(a) of SEBI circular No. SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated 15 October 2019 by having failed to file the CTR with FIU.

57. Besides the submissions of the Noticee dealt with in the preceding paragraphs, the Noticee in the alternative, has prayed for condonation of the said non-compliances. In this regard, I note that the present violations of the Noticee are not merely "technical" or insignificant in nature. The continuous non-compliance of SEBI Circulars spread over several quarters, misutlisation of clients funds and securities, could not be considered as mere technical lapse. Utilization of funds and securities of a client for purposes other than meeting the obligation of the said client is a serious breach of fiduciary responsibilities owed by the Noticee to its clients. Similarly, other established violations are also serious discrepancies for an intermediary of the securities market and is potentially harmful for smooth running of the market.

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act, and Section 23D of the SCRA, as applicable?

58. As it has been established that the Noticee has violated following provisions of SEBI Circulars, Broker's Regulations and SEBI press release dated April 27, 2020,

a) Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.
b) Clause 2.4.2 ,2.6,3, 6.1.1(j) and 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
c) SEBI press release -SEBI PR No. 24/2020 dated April 27, 2020 read with Clause A(2) & A(5) of the code of conduct r/w Regulation 9(f) of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992
d) SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011
e) Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017
f) Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 - SMS and E-mail alerts to investors by stock exchanges
g) Clause 2.10.2(a) of SEBI circular No. SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated 15 October 2019 by having failed to file the CTR with FIU
h) Clause 3(xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.

I am of the view that the Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act and Section 23D of SCRA, which are reproduced hereunder:

Relevant provisions of SEBI Act, 1992

Penalty for contravention where no separate penalty has been provided.

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

Relevant provisions of SC(R) Act, 1956

Penalty for failure to segregate securities or moneys of client or clients.

23D. *If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act and Section 23J of the SCRA?

59. While determining the quantum of penalty under Section 15HB, 15A(a), 15(C) of the SEBI Act and Section 23D of the SCRA, it is important to consider the factors stipulated in Section 15J of the SEBI Act and Section 23J of the SCRA which reads as under:

SEBI Act, 1992

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

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

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

(c) the repetitive nature of the default.

SCRA

23J. *While adjudging the quantum of penalty under 138[section 12A or section 23-I, the the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely:—*

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

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

(c) the repetitive nature of the default.

Explanation—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

60. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on the part of the said Noticee. From the document available on record, it is not ascertainable whether the acts of the Noticee are repetitive in nature. However, it is pertinent to that the role of a Broker/Trading Member (TM) is crucial to the development of the securities market, especially for the entry of the small investors for whom the broker is the first mile of contact. In this regard, the role of a TM is crucial as a facilitator of small investors into the securities market. So, it is of utmost importance that every TM abides by the relevant regulations, provisions of SEBI/Exchange circulars and various guidelines issued by SEBI/Exchanges. The non-compliances on the part of the Noticee as brought out in the preceding paragraphs clearly shows that it has failed in its fiduciary duties owed to its clients.

ORDER

61. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995, Section 23 I of the SCRA read with Rule 5 of the Securities Contract (Regulation) (Procedure for Holding Inquire and Imposing Penalties) Rules, 2005, I hereby impose following penalty under Section 15HB of the SEBI Act and Section 23D of the SCRA on the Noticee for violations of the following provisions of SEBI Circulars, Broker's Regulations and SEBI Press release dated April 27, 2020:

a) Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.
b) Clause 2.4.2 ,2.6,3, 6.1.1(j) and 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
c) SEBI press release -SEBI PR No. 24/2020 dated April 27, 2020 read with Clause A(2) & A(5) of the code of conduct r/w Regulation 9(f) of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.
d) SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011
e) Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017
f) Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 - SMS and E-mail alerts to investors by stock exchanges
g) Clause 2.10.2(a) of SEBI circular No. SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated 15 October 2019 by having failed to file the CTR with FIU
h) Clause 3(xii) of SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 07, 2016.

Name of Noticee	Penal provisions	Penalty
SMIFS Ltd.	**Section 23D of SCRA**	**Rs.3,00,000/-(Rupees Three Lakhs Only)**
	Section 15HB of the SEBI Act	**Rs.7,00,000/-(Rupees Seven Lakhs Only)**

62. 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 website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

63. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of the Noticee:	
3. PAN No. of the Noticee	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	

6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

64. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

65. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: February 28, 2023 **G RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**