BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/RK/2024-25/30289]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995; AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH 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
Maxpro Asia	INZ000038525	AAVFM7397P

In the matter of

Maxpro Asia.

Background

1) Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) and Multi Commodity Exchange of India Limited (MCX) had conducted comprehensive inspection of Stock Broking (Commodity) operations of Maxpro Asia (hereinafter referred to as **"Maxpro/Noticee"**), a SEBI-registered Stock Broker, having SEBI registration number as INZ000038525, to ascertain possible violation(s) of the provisions of the Securities and Exchange Board of India Act, 1992 **("SEBI Act")**, Securities Contracts (Regulation) Act, 1956 (hereinafter, referred to as **"SCRA"),** SEBI (Stock Broker) Regulations, 1992 (hereinafter referred to as the **"Brokers Regulations"**), SEBI (Certification Of Associated Persons In The Securities Markets) Regulations, 2007, SEBI (Intermediaries), Regulations 2008 and various SEBI Circulars by the Noticee. The said inspection was conducted from December

14, 2021 to December 17, 2021. The period covered in the inspection was from April 01, 2020 to June 30, 2021 (hereinafter referred to as **'Inspection Period/IP'**).

2) The inspection findings were communicated to the Noticee vide SEBI letter dated April 12, 2022 enclosing copy of the Inspection report (hereinafter referred to as **IR**). After examining the reply submitted by the Noticee vide email dated June 11, 2022, it had been alleged that the Noticee contravened various provisions of the securities law in respect of the activities carried out by it. The extracts of the violations alleged to have been committed by the Noticee and corresponding provision of the securities law are given in the table 1 below:-

Table 1:

Sr No.	**Alleged Violations (Summarized)**	**Regulatory Provisions**
1	Misuse of clients' funds and securities	Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
2.	Settlement of Clients' Funds	Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
3	Analysis of Enhanced Supervision data	Clause 3.2 read with Clause 6.1.1.j of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
4	Segregation of Bank accounts (transfer of funds between own, client & settlement account)	Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
5	Nomenclature of bank accounts maintained by the member	Clause 1.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95

		dated September 26, 2016 read with Clause 6.1.1. (f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
6	Client Registration process (KYC and KRA process)	SEBI Circular MIRSD/CIR-26/2011 dated December 23, 2011 read with Clause 5.4 of Schedule III to SEBI (Intermediaries) Regulations, 2008 and Regulation 21(1) of SEBI (Stock Brokers) Regulations, 1992
7	Contract Notes	Clause B.2 of Schedule II of Regulation 9 of SEBI (Stock Brokers) Regulations, 1992
8	Terminal verification and certification	Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 and Clause B (8) of Schedule II read with Regulation 9 (f) of SEBI (Stock Broker) Regulations, 1992
9	Financial Statement Analysis	Clause A (5) of Code of Conduct for Stock Brokers prescribed in Schedule II read with Regulation 9 (b) and 9 (f) of SEBI (Stock Brokers) Regulations, 1992

3) In view of the above, adjudication proceedings was initiated under Section 15HB of the SEBI Act and Section 23D of SCRA against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

4) SEBI, vide order dated July 04, 2023 and communiqué dated July 05, 2023, appointed Shri Amar Navlani as the Adjudicating Officer (AO) under Section 19 of the SEBI Act read with Sub-Section (1) of Section 15I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**SEBI Adjudication Rules'**) and under Section 23 I (1) of the SCRA read with rule 3 of the Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **SC(R) Rules**) to inquire into and adjudge under the provisions of Section 15HB of the SEBI Act and Section 23D of SCRA for the aforesaid violations alleged to have been committed by the Noticee. However, pursuant to the transfer of the erstwhile

said AO, undersigned was appointed as the AO in the matter vide Order dated March 14, 2024 communicated vide communique dated March 19, 2024.

SHOW CAUSE NOTICE, REPLY AND HEARING

5) A Show Cause Notice (**"SCN"**) No SEBI/EAD5/P/OW/2023/43566/1 dated October 26, 2023 was issued to Noticee in terms Rule 4(1) of SEBI Adjudication Rules and Rule 4(1) of SC(R) Rules to show cause as to why an inquiry should not be initiated against it and why penalty, if any, be not imposed upon it under Section 23D of SCRA and Section 15HB of SEBI Act for the aforesaid violations alleged to have been committed by it.

6) The SCN was sent to Noticee through Speed Post AD and via digitally signed Email which was duly delivered on the same day. The proof of service is on record. In response, the Noticee vide letter dated November 07, 2023 made preliminary submission in the matter and sought inspection of documents relied upon in the matter. Accordingly, vide email dated November 28, 2023, the Noticee was granted an opportunity to inspect copies of the documents on December 01, 2023, which was duly availed by the Noticee. Further, vide email dated December 05, 2023, Noticee requested to be provided with additional documents in the matter after conclusion of inspection of documents by it. However, it is observed from records that there were no documents pending to be inspected by the Noticee. Subsequently, vide letter dated March 01, 2024, Noticee submitted its detailed reply in the matter.

7) In the interest of natural justice, an opportunity of personal hearing was granted to the Noticee on April 16, 2024 vide hearing notice dated April 10, 2024. The said hearing notice was sent to the Noticee via SPAD and through digitally signed email dated April 10, 2024 and was duly served upon Noticee. The said hearing was attended to by the Authorised Representatives (ARs) of the Noticee wherein they reiterated the submissions made by the Noticee vide its letter dated November 07, 2023 and March 01, 2024. The said ARs sought time to made additional submission

in the matter, which was accordingly granted. The Noticee made additional submission in the matter vide email dated April 23, 2024.

8) The Noticee's reply vide its letter dated March 01, 2024 and April 23, 2024 are summarized as under:

Reply of the Noticee

a) Noticee submitted that it had not executed any trades in the Proprietary Trading Account ("Prop. Account") during the IP as alleged and that with regard to G being negative, it had rectified the said negative shortage/ balance by making a payment of Rs 17,00,000/- on February 28, 2022 to its clearing member, Globe Commodities Limited (Globe) and also provided with a copy of its ledger balance in the books of globe.

b) It submitted that SEBI had failed to take into cognizance the fact it had the following deposits/advances in its Balance Sheet which was free of any charge and that the said deposit/advances had not been considered while calculating the value of G, which is as mentioned in table below:

Sr No.	***Particulars***	***Amount***
1	*MCX (BMC)*	*Rs 10 lacs*
2	*Deposit- MCS (BC) (Deposit with SEBI)*	*Rs 5 Lacs*

c) It submitted that taking considering the amount of Rs 15 lacs towards calculation of G, the value of G would be negative in 24 out of 58 alleged instances.

d) That with respect to settlement of clients' funds, it had taken corrective steps and that as per its balance sheet as on March 31, 2023, the trade payable was around Rs 8600/- indicating that it had settled all its accounts.

e) *It further submitted that it had never received any client complaints in respect of the alleged non-settlement of client funds and that many a times the funds are withheld since there are open outstanding positions in client's account/ client's family accounts and there are margin requirements.*

f) *It also made a submission that at times the clients themselves request to withhold the funds for the convenience of trading.*

g) *With regard to Analysis of Enhanced Supervision data, Noticee submitted that incorrect reporting was merely a technical error and that it had not been the beneficiary of any unfair gain/advantage.*

h) *With regard to Segregation of Bank accounts (transfer of funds between own, client & settlement account), Noticee submitted that out of the total of Rs 33.79 Lakhs, Rs 17.78 Lakhs pertained to brokerage and around Rs 4.05 Lakhs pertained to GST and Stamp Duty indicating that the amounts were transferred in context of the particular reasons to own account i.e. brokerage/ GST etc. It further submitted that the transfer was inadvertently done and immediately thereafter corrective steps were taken to correct the said error*.

i) *With respect to the Nomenclature of bank accounts maintained by the member, Noticee submitted that it had inter alia requested the bank to display the name in its bank account as Maxpro Asia Client Account and Maxpro Asia Own Account but the bank had rejected its said request and advised it to open a fresh account and close the existing account. Subsequently, it had opened a fresh account with another bank.*

j) *As regards, Client Registration process (KYC and KRA process), Noticee submitted that it had always cooperated with the inspection team and that the KRA and CKYC (Individual Clients) were not submitted and pending due to internal system error.*

k) *It further submitted that as on date it had done CKYC of 20 clients and is in the process & following up with the remaining 5 clients.*

l) *It also added that after duly verifying all the documents, it had inducted its clients and that the requisite KYC data of all its clients is available with it.*

m) *With respect to the Contract notes, Noticee submitted that it had taken corrective action and had made the modifications in the contract note by adding the Name of compliance officer, phone number and email ID and also submitted contract notes to substantiate its claim of having rectified the discrepancy.*

n) *Noticee submitted that as on date it has duly adhered to the Certification requirements and the concerned persons have attained the required NISM qualification.*

o) *Lastly, it submitted that it had introduced funds so that the alleged non-compliance do not recur and has enough funds to settle the clients accounts in the FY 2021-2022 and 2022-23 and has provided with a Net-Worth certificate dated 08.11.2023 wherein Noticee claims of having net worth of Rs 13.65 Lakhs for the FY 2021-2022 and Rs 32.92 Lakhs for the FY 2022-2023.It further submitted that the corrective steps have been taken.*

p) *Noticee submitted that as on date it is in a dormant status and has no business and that the last date of trade executed by it was on April 08, 2021. Its total brokerage in FY 2021-2022 was around Rs 10,960/- and there was no revenue from operations thereafter, and that any penalty imposed vide adverse order would gravely hamper its sustainability.*

9) I note that Inspection findings are based on analysis of samples and test checking of various books and other records maintained by the Noticee, as well as written/oral submissions of the Noticee & its officials to the inspection team. Consequently, the instances of irregularities/observations pointed out in inspection report are illustrative in nature and are not all-inclusive. The allegations levelled against it, its submissions and findings in respect of the same are dealt with in the subsequent paragraphs of this order.

CONSIDERATION FOR ISSUES, EVIDENCE AND FINDINGS

10) I have taken into consideration the facts and circumstances of the case, submissions of the Noticee and the material available on record. The issues that arise for consideration in the present case are:

ISSUE I- Whether Noticee has violated provisions of SCRA, Brokers Regulations, SEBI (Certification Of Associated Persons In The Securities Markets) Regulations, 2007, Intermediaries Regulations and SEBI Circulars as mentioned at para 2 above?

ISSUE II- Does the violation, if any, on the part of the Noticee attract penalty under Section 15HB of the SEBI Act and Section 23D of the SCRA?

ISSUE III- If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act and 23J of SCRA?

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

Section 23 D of SCRA:

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.]

<u>SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993</u>

<u>Regulation of transactions between clients and brokers</u>

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

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

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

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

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

C] *What moneys to be paid into "clients account". No money shall be paid into clients account other than -*

i. money held or received on account of clients;

ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;

iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;

iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.

***D]** What moneys to be withdrawn from "clients account". No money shall be drawn from clients account other than –*

i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;

ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;

iii. money which may by mistake or accident have been paid into such account in contravention of para C above.

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

<u>SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016</u>

Annexure

1.Naming/Tagging of Bank and Demat Accounts by Stock Broker

***1.1**.Bank accounts and Demat accounts maintained by all stock brokers shall have appropriate nomenclature to reflect the purpose for which those bank/demat accounts are being maintained.*

***1.2**.The nomenclature for bank accounts and demat accounts to be followedis given as under:*

***1.2.1**.Bank account(s) which hold clients funds shall be named as "Name of Stock Broker -Client Account".*

***1.2.2**.Bank account(s) which hold own funds of the stock broker shall be named as "Name of Stock Broker -Proprietary Account".*

***1.2.3**.Demat account(s)which hold clients' securities shall be named as "Name of Stock Broker-Client Account".*

***1.2.4.**Demat account(s), which hold own securities of the stock broker, shall be named as "Name of Stock Broker-Proprietary Account".*

***1.2.5**.Demat account(s), maintained by the stock broker for depositing securities collateral with the clearing corporation, shall be named as "Name of Stock Broker-Collateral Account".*

***1.2.6**.Demat account(s) held for the purpose of settlement would be named as " Name of Stock Broker -Pool account".*

***1.2.7**.Bank account(s) held for the purpose of settlement would be named as " Name of Stock Broker -Settlement Account"*

***2.4.2.**Transfer of funds between "Name of Stock Broker -Client Account" and "Name of Stock Broker -Settlement Account" and client's own bank accounts is permitted. Transfer of funds from "Name of Stock Broker -Client Account" to "Name of Stock Broker -Proprietary Account" is permitted only for legitimate purposes, such as, recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such transfer of funds,* *stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred*

Clause 3 *- Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges*

3.1. *Stock Exchanges shall put in place a mechanism for monitoring clients' funds lying with the stock broker to generate alerts on any misuse of clients' funds by stock brokers, as per the guidelines stipulated in para 3.2 & 3.3 below.*

3.2. *Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:*

A*-Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained bythe stock broker across stock exchanges*

B*-Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.)(across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.*

C*-Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)*

D*-Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)*

***E**-Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)*

***F**-Aggregate value of Non-funded part of the BG across Stock Exchanges*

***P**-Aggregate value of Proprietary Margin Obligation across Stock Exchanges*

***MC**-Aggregate value of Margin utilized for positions of Credit Balance Clients across Stock Exchanges*

***MF**-Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges*

***3.3**.Based on the aforesaid information submitted by the stock broker, Stock Exchanges shall put in place a mechanism for monitoring of clients' funds lying with the stock brokers on the principles enumerated below:*

***3.3.1**.Funds of credit balance clients used for settlement obligation of debitclients or for own purpose:*

Principle:

The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C)

Stock Exchanges shall calculate the difference i.e. G as follows –

G = (A+B)-C

If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement *obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges.*

Thereafter, the absolute value of G shall be compared with debit balance of all clients as per client ledger D as follows:

If the absolute value of (G) is lesser than |D|, then the stock broker has possibly utilised funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G.If the absolute value of (G) is greater than |D|, then the stock broker has possibly utilised a part of funds of credit balance clients towards settlement obligations of debit balance clients and remaining part for his own purposes. In such cases the amount of client funds used for own purpose is calculated as follows:

$H = |G| - |D|$

3.3.2*.Funds of clients used for Margin obligation of proprietary trading:*

Stock Exchanges shall thereafter, verify whether the proprietary margin obligations (across Stock Exchanges) is less than the own funds and securities lying with the Stock Exchanges as collateral deposit, as follows:

Principle:

The sum of Proprietary funds and securities i.e. (G + E + F) lying with the clearing corporation/clearing member should be greater than or equal to Proprietary margin obligations (P)

If value of G is positive (i.e. A+B > C), then proprietary funds are lying with the clearing corporation/clearing member and/or client bank accounts along with the clients funds to the extent of positive value of G.

The sum of the proprietary funds (positive value of G), the value of proprietary securities (E) and the non-funded portion of bank guarantee (F) available in the Stock Exchanges is compared with the Proprietary margin obligations (P).

If P > (G+E+F), then Stock Exchange shall calculate the difference I, which is the amount of proprietary margin obligation funded from clients assets.

I = P -(G+E+F)

If G is negative, then, value of G is considered as 0, as there is no proprietary funds lying with the stock exchange.

The value of I indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations. This value of I acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations.

***3.3.3.** Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:*

Stock Exchanges shall thereafter, verify whether the clients funds lying with the clearing corporation/clearing member are utilised towards margin obligations of debit balance clients and proprietary margin obligations.

Principle:

The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)

If value of G is negative (i.e. A+B < C), then fund lying with the clearing corporation/ clearing member (B) is entirely clients' fund. In such cases, B is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member. The value of J is calculated as under:

J = B -(MC + MF)

If value of G is positive (i.e. A+B > C), then fund lying with the clearing corporation/clearing member (B) may contain proprietary and clients' fund. Hence, *the value of clients funds lying with the clearing corporation/ clearing member i.e. (C-A) shall be considered in the place of B.*

In such cases, (C-A) is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/clearing member. The value of J, which is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations, is calculated as under:

J = (C -A) -(MC + MF)

The value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations. This value of J acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations.

***3.4**.Based on the alerts generated, Stock Exchange shall, inter-alia, seek clarifications, carry out inspections and initiate appropriate actions to protect the clients' funds from being misused. Stock Exchanges shall also maintain records of such clarifications sought and details of such inspections. The aforesaid calculations are illustrated in tabular format in Table 1, 2 & 3 given at the end of the annexure.*

***3.5**.Stock Exchanges shall put in place the aforesaid monitoring mechanism within three months from the date of this circular and carry out the monitoring of clients' funds for all stock brokers, except for those who are carrying out only proprietary trading and/or only trading for institutional clients.*

***3.6**.Stock Brokers shall ensure due compliance in submitting the information to the Exchanges within the stipulated time.*

6.1.1.Monitoring criteria for Stock Brokers

***f.** Failure to assign appropriate Bank and Demat nomenclature within the time specified and to report the same to the Stock Exchanges.*

j.*In case stock broker shares incomplete/wrong data or fails to submit data on time.*

8.Running Account Settlement

8.1.1.*There must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.*

SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009

Annexure-A

12 *Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:*

(e) *The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any****.***

SEBI Circular MIRSD/CIR-26/2011 dated December 23, 2011

https://www.sebi.gov.in/legal/circulars/dec-2011/guidelines-in-pursuance-of-the-sebi-kyc-registration-agency-kra-regulations-2011-and-for-in-person-verification-ipv-_21803.html

SEBI (Stock Brokers) Regulations, 1992

Clause B (2) in Schedule II of Regulation 9

(2) Issue of Contract Note: *A stock-broker shall issue without delay to his client [or client of the sub-broker, as the case may be] a contract note for all transactions in the form specified by the stock exchange.*

Clause B (2) in Schedule II of Regulation 9

(8) Competence of Stock-Broker*: A stock-broker should have adequately trained staff and arrangements to render fair, prompt and competence services to his clients.*

Conditions of registration.

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

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

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

"….

Obligations of stock-broker on inspection by the Board.

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

SCHEDULE II
Securities and Exchange Board of India (Stock Brokers 103[***]) Regulations, 1992
CODE OF CONDUCT FOR STOCK BROKERS
[Regulation 9]

A. General.

(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.

"….

SECURITIES AND EXCHANGE BOARD OFINDIA
(CERTIFICATION OF ASSOCIATED PERSONS IN THE SECURITIES MARKETS) REGULATIONS, 2007
CHAPTER II
CERTIFICATION OFASSOCIATED PERSONS

Obligation to obtain certificate

3. (1) *The Board may by notification in the Official Gazette require such categories of associated persons to obtain requisite certificate for engagement or employment with such classes of intermediaries and from such date as may be specified in the notification:*

Provided that an associated person employed or engaged by an intermediary prior to the date specified by the Board may continue to be employed or engaged by the intermediary if he obtains the certificate within two years from the said date.

(2) *An associated person on being employed or engaged by an intermediary on or after the date specified by the Board shall obtain the certificate within one year from the date of being employed or engaged bythe intermediary.*

(3) *An associated person who, as on the date specified by the Board, holds a certificate for a category as recognized by the Board shall not be required to obtain a fresh certificate for the same category during the validity of such certificate.*

(4)*The Board for the purpose of issuing notification under sub regulations (1) and (2) shall take into consideration:*

(a)whether the associated person as part of his work or operation deals or interacts with the investors, issuers or clients of intermediaries;

(b)whetherthe associated person deals with assets or funds of investor orclients;(c)whetherthe associated person handlesredressalof investor grievances;

(d)whetherthe associated person is responsible for internal controlor riskmanagement;

(e)whetherthe associated person is responsible for compliance of any rules orregulations;

(f)whetherthe associated person is engaged in activities that have a bearing onoperational risk of the intermediary.

SCHEDULE III
SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008
[See regulation 16]

V. COMPLIANCE AND CORPORATE GOVERNANCE

5.4 *An Intermediary shall co-operate with the Board, or any authority designated by the Board, as and when required and shall not make any untrue statement or suppress any material fact in any documents, reports, papers or information furnished to the Board or neglect or fail or refuse to submit to the Board or other agencies with which it is registered, such books, documents, correspondence and papers or any part thereof as may be demanded/requested from time to time.*

FINDINGS

On perusal of the material available on record and giving regard to the facts and submission of the Noticee and circumstances of the case, I record my findings hereunder:

ISSUE I: Whether Noticee has violated provisions of SCRA, Brokers Regulations, SEBI (Certification Of Associated Persons In The Securities Markets) Regulations, 2007, Intermediaries Regulations and SEBI Circulars as mentioned at para 2 above?

Misuse of the clients' funds

12) It was observed that on all 45 days chosen for verification of mis-utilization of clients' funds, the value of 'G' was negative. In other words, the ledger balances available in all the client bank accounts of the Noticee along with the collaterals deposited with the Exchanges/Clearing Corporation were found to be lesser than the ledger balance of the credit balance clients on the said days. Details of these 45 days are furnished in Table 2 below:

Table-2: Showing funds available with client bank account and collaterals deposited with exchanges/clearing corporation/clearing member is not sufficient to meet the balances of credit balance clients:

Sl No.	Dates	Total End of the day balance in all Client Bank Accounts	Collateral deposited with Clearing Corporation in form of Cash and Cash Equivalents	Total credit balance (after adjusting for open bills and uncleared cheques)	Total debit balance (after adjusting for open bills and uncleared cheques)	Difference (A+B-C)
		(A)	(B)	(C)	(D)	(G)
1	01/09/2020	154825.78	6545352.72	7352947.62	230926.35	-6,52,769.12
2	02/09/2020	154825.78	6627545.62	7341045.18	230926.35	-5,58,673.78
3	03/09/2020	134825.78	6376109.88	7014646.52	230926.35	-5,03,710.86
4	04/09/2020	184825.78	6112448.09	6708681.93	230926.35	-4,11,408.06
5	07/09/2020	184825.78	6337636.28	7006012.53	230926.35	-4,83,550.47
6	08/09/2020	134825.78	6281550.36	6937242.89	230926.35	-5,20,866.75
7	09/09/2020	164825.78	5611898.03	6358689.86	230926.35	-5,81,966.05
8	10/09/2020	164825.78	5586672.23	6329324.22	230926.35	-5,77,826.21
9	11/09/2020	101825.78	5336170.84	6035589.09	230926.35	-5,97,592.47
10	14/09/2020	166825.78	5469792.96	6267025.04	230926.35	-6,30,406.30
11	15/09/2020	136825.78	5616161.94	6412398.34	230926.35	-6,59,410.62
12	16/09/2020	136825.78	5664922.76	6457880.88	230926.35	-6,56,132.34
13	17/09/2020	99825.78	5678803.03	6466362.60	230926.35	-6,87,733.79
14	18/09/2020	149825.78	5338957.40	6417534.99	230926.35	-9,28,751.81
15	21/09/2020	166133.27	5302946.19	6395508.05	230926.35	-9,26,428.59
16	22/09/2020	127675.27	4333949.86	5380291.09	230926.35	-9,18,665.96
17	23/09/2020	127675.27	4387285.3	5416313.81	223554.63	-9,01,353.24
18	24/09/2020	110675.27	4227073.19	5250789.02	223554.63	-9,13,040.56
19	25/09/2020	125675.27	4123243.03	5195846.35	223554.63	-9,46,928.05
20	28/09/2020	116639.87	4031092.18	5097279.33	223554.63	-9,49,547.28
21	29/09/2020	107457.47	4135291.46	5192521.96	223554.63	-9,49,773.03
22	30/09/2020	102457.47	3764537.17	4872247.39	223554.63	-10,05,252.75
23	01/03/2021	98854.01	633517.11	2440820.22	237925.43	-17,08,449.10
24	02/03/2021	98439.71	983517.11	2940820.22	237925.43	-18,58,863.40
25	03/03/2021	98439.71	983517.11	2940820.22	237925.43	-18,58,863.40

26	04/03/2021	98439.71	960220.97	2914228.77	237925.43	-18,55,568.09
27	05/03/2021	97650.74	865838.68	2815904.33	237925.43	-18,52,414.91
28	08/03/2021	97650.74	745387.22	2694086.63	237925.43	-18,51,048.67
29	09/03/2021	102030.03	750260.57	2668437.39	237925.43	-18,16,146.79
30	10/03/2021	117030.03	918113.04	2700958.53	237925.43	-16,65,815.46
31	11/03/2021	104530.03	918113.04	2649694.26	237925.43	-16,27,051.19
32	12/03/2021	101614.47	905596.45	2646778.70	237925.43	-16,39,567.78
33	15/03/2021	101614.47	905492.22	2646778.70	237925.43	-16,39,672.01
34	16/03/2021	98675.84	907435.67	2642152.92	237925.43	-16,36,041.41
35	17/03/2021	2675.84	919421.96	2652718.29	237925.43	-17,30,620.49
36	18/03/2021	2675.84	931651.12	2663491.78	237925.43	-17,29,164.82
37	19/03/2021	2675.84	904901.61	2633680.82	237925.43	-17,26,103.37
38	22/03/2021	10380.84	942373.94	2668145.07	237925.43	-17,15,390.29
39	23/03/2021	10380.84	1237360.67	2650517.91	237925.43	-14,02,776.40
40	24/03/2021	1194.33	1188271.74	2587677.25	237925.43	-13,98,211.18
41	25/03/2021	1194.33	1138003.64	2527226.57	237925.43	-13,88,028.60
42	26/03/2021	1194.33	1063309.81	2450452.24	237925.43	-13,85,948.10
43	29/03/2021	1158.93	1063309.81	2450462.98	237925.43	-13,85,994.24
44	30/03/2021	1158.93	964031.27	2447553.59	237925.43	-14,82,363.39
45	31/03/2021	1158.93	962450.18	2447553.59	237925.43	-14,83,944.48

13) The above instances indicated that the Noticee had allegedly not segregated client funds from its own funds.

14) Further, with respect to Analysis of Enhanced Supervision Data, it was observed that G was negative in 13 out of 13 sample instances. Details of G negative in these 13 instances on various dates is mentioned in table 3 below:

Table 3:

Date	G value
24.04.2020	-1201857.8
22.05.2020	-1021610.98
12.06.2020	-1214726
03.07.2020	-1190523.87
21.08.2020	-1128085.83

30.10.2020	-2118991.95
13.11.2020	-2396929.34
24.12.2020	-2533961.41
29.01.2021	-1914162.35
05.02.2021	-1938151.44
16.04.2021	-1518188.8
07.05.2021	-1789411.32
04.06.2021	-1880697.92

15) In view of the above, G was observed to be negative in 58/58 sample instances (45 SEBI instances and 13 MCX instances) and that the alleged misutilised amount ranged from Rs. 4.11 lakh to Rs. 25.33 lakh which was allegedly used for meeting the obligations of debit balance clients and/or for its own purpose.

16) Thus, it was alleged that the Noticee had violated Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 in view of G being negative in all 58 instances indicating misutilization of amount ranging from Rs. 4.11 lakh to Rs. 25.33 lakh, used for meeting the obligations of debit balance clients and/or for its own purpose.

17) In this regard, I note that the Noticee submitted that it had not executed any trades in the Proprietary Trading Account **("Prop. Account")** during the IP as alleged and that with regard to G being negative, it had rectified the said negative shortage/ balance by making a payment of Rs 17,00,000/- on February 28, 2022 to its clearing member, Globe Commodities Limited (Globe) and also provided with a copy of its ledger balance in the books of globe. It further submitted that SEBI had failed to take into cognizance the fact it had the following deposits/advances in its Balance Sheet which was free of any charge and that the said deposit/advances had not been considered while calculating the value of G, which is as mentioned in table 4 below:

Table 4:

Sr No.	Particulars	Amount
1	MCX (BMC)	Rs 10 lacs
2	Deposit- MCS (BC) (Deposit with SEBI)	Rs 5 Lacs
TOTAL		**Rs 15 Lacs**

18)It further submitted that considering the amount of Rs 15 lacs towards calculation of G, the value of G would be negative in 24 out of 58 alleged instances.

19) I note that Noticee has admittedly failed to maintain 'G' positive on all 58 instances and that bringing in funds of Rs 17,00,000 conspicuously shows that the Noticee failed to maintain 'G'positive. Further, with regard to the submission that the deposits of Rs 15 lacs were not considered by SEBI while calculating G, I note that the Noticee has misinterpreted the Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 which reads as mentioned below:

Annexure A

Clause 3 *- Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges*

3.1. Stock Exchanges shall put in place a mechanism for monitoring clients' funds lying with the stock broker to generate alerts on any misuse of clients' funds by stock brokers, as per the guidelines stipulated in para 3.2 & 3.3 below.

3.2. Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:

A-Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained bythe stock broker across stock exchanges

B-Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.)(across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.

C-Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)

20) From point B of Clause 3.2 above, I note that it nowhere specifies that the deposit with exchanges towards Base Minimum Capital (BMC) has to be considered towards calculation of G. Further, I note that in terms of SEBI Circular CIR/MRD/DRMNP/ 36 /2012 dated December 19, 2012, BMC is the deposit given by the member of the exchange against which no exposure for trades is allowed.

21) Further, I note that the value of 'G' being negative in respect of 58 out of all 58 instances as verified during the inspection, it 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.4.11 lacs to Rs.25.33 lacs during the period of inspection. In this regard, it is pertinent to refer to the following judgement of the Hon'ble Securities Appellate Tribunal (Hon'ble 'SAT') in ***Samco Securities Ltd. vs SEBI*** (Appeal No. 493 of 2021 decided on March30,2022),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 stock broker 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."

22) Therefore, I note that the submission of the Noticee are devoid of merits.

23) Thus, in view of the above, I hold that the Noticee has violated Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

<u>Settlement of Clients' Funds</u>

24) It was observed that the Noticee had not done Quarterly Settlement of any of its clients during the IP. The details of clients having balance greater than Rs.10,000/- at the end of each quarter is mentioned in table 5 below:

Table 5:

Sl. No.	Quarter of F.Y.2020-21	No of Clients
1.	Q1 (April-June)	17
2	Q2 (July-September)	9
3	Q3(October-December)	5
4	Q4 (January-March)	4
Sl. No.	**Quarter of F.Y.2021-22**	**No of Clients**
1	Q1 (April-June)	5

25) In this regard, it was further observed from the internal audit reports of four quarters i.e. October 2019 – March 2020 & April 2020 – September 2020, the same observation was made by the exchange, wherein Exchange had levied penalty for the non-compliances observed by the internal auditor and the Noticee had paid the penalty amount.

26) Further, it was observed that the Noticee had not settled funds of 30 unique clients with maximum non-settled amount of Rs. 34.99 lakhs in a quarter.

27) In this regard, I note that the Noticee in its reply to the findings of the Inspection Report had submitted that it had done the quarterly settlement after the inspection.

28) In view of the above non-compliance, Noticee was alleged to have violated Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016**.**

29) In this regard, Noticee submitted that pursuant to the inspection, it had taken corrective steps and that as per its balance sheet as on March 31, 2023, the trade payable was around Rs 8600/- indicating that it had settled all its accounts. It further submitted that it had never received any client complaints in respect of the alleged non-settlement of client funds and that many a times the funds were withheld since there were open outstanding positions in client's account/ client's family accounts and there were margin requirements. It also made a submission that at times the clients themselves request to withhold the funds for the convenience of trading.

30) I note that the Noticee had admittedly not settled the accounts within 90 days of the previous settlement of running account of 30 unique clients. As a SEBI registered intermediary, it was 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 that no complaint was made by any client in this regard. Further, as admitted by the Noticee in respect of certain accounts, the Noticee settled the funds subsequent to findings of inspection. W.r.t submission of the Noticee that at times clients themselves requested to withhold the funds for the convenience of trading, I note that there is no provision of SEBI circular that allowed to withhold the clients’ funds. Thus, the reply of the Noticee in the context of the said charges/violations shows the tacit admission on its part w.r.t the said charges/allegations.

31) Accordingly, in view of the aforesaid, its stands established that the Noticee has violated Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Analysis of Enhanced Supervision data

32) It was observed that the Noticee had not correctly uploaded details of all clients' funds lying with it on stock exchange system for 10 out of 13 sample-selected dates and that the ledger balances available in all the client bank accounts of the Noticee along with the collaterals deposited with the Exchanges / Clearing Corporation were found to be lesser than the ledger balance of the credit balance clients on the said days, indicating that the funds of credit balance clients were being utilized either for the settlement obligations of debit balance clients or for its own purposes.

33) In view of the aforesaid non-compliance during the IP, the Noticee was alleged to have violated Clause 3.2 read with Clause 6.1.1.j of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

34) The Noticee in its reply to the SCN submitted that the incorrect reporting was merely a technical error and that it had not been the beneficiary of any unfair gain/advantage.

35) As regards Noticee's aforesaid submission, I note that the Noticee had admittedly done the wrong uploading of clients funds on the stock exchange system. In this regard, I note that the reporting of data is not only to calculate the value of "G" but also for better transparency. Being a SEBI regulated intermediary, Noticee had the responsibility to report the correct figures. The Noticee in the instant case exhibited a casual approach while reporting the data which is unbecoming of a stock broker. From the submission of the Noticee, I observe that it has rectified the irregularities after inspection.

36) In view of the above, it is established that the Noticee has violated Clause 3.2 read with Clause 6.1.1.j of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Segregation of Bank accounts (transfer of funds between own, client & settlement account)

37) It was observed that there had been an excess transfer of funds (Rs.11,96,050.68) from Client Bank Account to Own Bank Account during the IP.

38) In this regard, I note that the Noticee in its reply to the findings of the Inspection Report had accepted the violation.

39) Accordingly, the Noticee was alleged to be in violation of Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

40) I note that the Noticee in its reply to the SCN submitted that out of the total of Rs 33.79 Lakhs, Rs 17.78 Lakhs pertained to brokerage and around Rs 4.05 Lakhs pertained to GST and Stamp Duty indicating that the amounts were transferred in context of the particular reasons to own account i.e. brokerage/GST etc. It further submitted that the transfer was inadvertently done and immediately thereafter corrective steps were taken to correct the said error.

41) Therefore, in view of the above, I note that the Noticee has violated Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 by doing excess transfer of funds (Rs. 11,96,050.68) from Client Bank Account to Own Bank Account.

Nomenclature of bank accounts maintained by the member

42) It was observed that a uniform nomenclature had not been followed for client bank accounts and own bank accounts.

43) In this regard, Noticee in its reply to the findings of the inspection submitted that it would comply immediately.

44) Therefore, in view of the above, Noticee was alleged to have violated Clause 1.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 6.1.1. (f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

45) Noticee in its reply to the SCN made a submission that it had inter alia requested the bank to display the name in its bank account as Maxpro Asia Client Account and Maxpro Asia Own Account but the bank had rejected its said request and advised it to open a fresh account and close the existing account. Subsequently, it had opened a fresh account with another bank.

46) With regard to the aforesaid submission of the Noticee, I note that it had admittedly failed to maintain proper nomenclature as alleged and subsequent opening of fresh account in this regard further concretes this fact. However, I find that Noticee has taken corrective steps after it was made aware of the lapse by the inspection team.

47) Accordingly, in view of the aforesaid, it stands established that the Noticee has violated Clause 1.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 6.1.1. (f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 by having failed to follow the nomenclature for client bank accounts and own bank accounts.

Client Registration process (KYC and KRA process)

48) It was observed that the Noticee had not submitted the KRA and CKYC (Individual Clients) details for all the selected sample of 25 clients to the inspection team, the respective details are mentioned in table 6 below:

Table 6:

KYC Client Code
1117
1745
1752
1754
1766
1771
1773
1785
1786
1792
1799
1808
1813
1814
1815
1820
1824
1825
1827
1829
1899
FA001
FA002
FA004
FCOM104

49) It was further alleged that the Noticee had not cooperated with the inspection team by not submitting the required details of the sample selected for inspection.

50) It was also observed from the internal audit reports that the Noticee had not uploaded the KYC information with KRA and CKYCR of four quarters i.e. October

2019 – March 2020 & April 2020 – September 2020 and that the exchange had levied penalty which was duly paid by it and had also issued advisory letter for the non-compliances observed by the internal auditor.

51) In this regard, Noticee in its reply to the findings of the inspection had submitted that KRA and CKYC was in process and it would comply immediately.

52) Accordingly, in view of the above non-compliance, Noticee was alleged to have violated SEBI Circular MIRSD/CIR-26/2011 dated December 23, 2011 read with Clause 5.4 of Schedule III to SEBI (Intermediaries) Regulations, 2008 and Regulation 21(1) of SEBI (Stock Brokers) Regulations, 1992.

53) Noticee submitted that it had always cooperated with the inspection team and that the KRA and CKYC (Individual Clients) were not submitted and pending due to internal system error. It further submitted that as on date it had done CKYC of 20 clients and is in the process & following up with the remaining 5 clients.

54) With regard to the aforesaid submission of the Noticee, I note that the Noticee has not denied the allegation and has accepted the violation on its part by admitting that the KRA and CKYC (individual clients) were not submitted and were pending due to internal system error. Further, I note from the submission of the Noticee and CKYC data submitted by the Noticee as an annexure to its reply that the CKYC of 15 clients is done and that for remaining 5 clients, it is still pending. Further, as regards, submission of KRA data of the clients, I note that the Noticee has merely made a statement that it has KYC data of the clients but has not provided any documentary evidence post inspection in support of the above, thus, indicating non-cooperation with the inspection team w.r.t data sought by them.

55) In view of the aforesaid, I note that the Noticee has violated SEBI Circular MIRSD/CIR-26/2011 dated December 23, 2011 read with Clause 5.4 of Schedule III to SEBI (Intermediaries) Regulations, 2008 and Regulation 21(1) of SEBI (Stock Brokers) Regulations, 1992.

Contract Notes

56) Out of the 13 contact notes verified during the course of inspection, it was observed that name of Compliance Officer, phone number and e-mail id were missing in the contract notes issued on the dates mentioned in table 6 below:

Table 6:

Sl. No.	Date
1	27/04/2020
2.	01/05/2020
3.	03/06/2020
4.	09/07/2020
5.	21/08/2020
6.	03/09/2020

57) In this regard, it was observed that the Noticee in its reply to the findings of the inspection had submitted that the same was rectified after conclusion of inspection.

58) in view of the above, Noticee was alleged to have violated Clause B.2 of Schedule II of Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

59) I note that the Noticee in its reply to the SCN has submitted that it had taken corrective action and had made the modifications in the contract note by adding the Name of compliance officer, phone number and email ID and also submitted contract notes to substantiate its claim of having rectified the discrepancy.

60) From the submission of the Noticee, I note that the Noticee has admittedly not mentioned the name of Compliance Officer, phone number and e-mail id on the contact notes on the dates mentioned above during the IP which was a violation, although the same has now been rectified.

61) Accordingly, in view of the above, I note that the Noticee has violated Clause B.2 of Schedule II of Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

Terminal verification and certification

62) It was observed that the Noticee had submitted that its employees did not hold MCCP/NISM Certification and that its compliance officer did not possess NISM Series III A Certification for Compliance Officer during the IP.

63) In this regard, it was observed from the internal audit reports of four quarters i.e. for the period April 2019 – September 2019, October 2019 – March 2020 & April 2020 – September 2020, the exchange had made the same observation for which it had issued advisory letter and levied penalty for the non-compliances observed by the internal auditor and that the Noticee had also paid the penalty levied on it.

64) I note that the Noticee in its reply to the findings of the inspection had accepted that it did not have required certificates.

65) In view of the same, Noticee was alleged to have violated Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 and Clause B (8) of Schedule II read with Regulation 9 (f) of SEBI (Stock Broker) Regulations, 1992.

66) Noticee in its reply to the SCN has submitted that as on date it has duly adhered to the Certification requirements and the concerned persons have attained the required NISM qualification.

67) With regard to the Noticee's aforesaid submission, I note that while Noticee has taken corrective steps now, admittedly its employees did not have NISM Certification during the IP.

68) Therefore, in view of the above, it stands established that the Noticee has violated Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 and Clause B (8) of Schedule II read with Regulation 9 (f) of SEBI (Stock Broker) Regulations, 1992.

Financial Statement Analysis

69) It was observed that the Noticee did not have surplus funds to meet its clients obligation as on 31-03-2021 based on its balance sheet.

70) Noticee in its reply to the findings of the inspection had submitted that the required fund had been replaced. However, it had not submitted any evidence to substantiate its claim.

71) In view of the same, Noticee was alleged to have violated Clause A (5) of Code of Conduct for Stock Brokers prescribed in Schedule II read with Regulation 9 (b) and 9 (f) of SEBI (Stock Brokers) Regulations, 1992.

72) In this regard, I note that the Noticee in its reply to the SCN has submitted that it had introduced funds so that the alleged non-compliance do not recur and has enough funds to settle the clients accounts in the FY 2021-2022 and 2022-23 and has provided with a Net-Worth certificate dated 08.11.2023 wherein Noticee claims of having net worth of Rs 13.65 Lakhs for the FY 2021-2022 and Rs 32.92 Lakhs for the FY 2022-2023.It further submitted that the corrective steps have been taken.

73) With regard to the aforesaid submission of the Noticee, I note that the Noticee was not having sufficient funds during the IP and that subsequent bringing of funds after being pointed out by inspection team demonstrates Noticee's admission to the allegation levelled against it.

74) In view of the above, Noticee has violated Clause A (5) of Code of Conduct for Stock Brokers prescribed in Schedule II read with Regulation 9 (b) and 9 (f) of SEBI (Stock Brokers) Regulations, 1992.

ISSUE II- Does the violation, if any, on the part of the Noticee attract penalty under Section 15HB of the SEBI Act and Section 23D of the SCRA?

75) As has been established above that Noticee is in violation of the following provisions of SCRA, Brokers Regulations, SEBI (Certification Of Associated

Persons In The Securities Markets) Regulations, 2007, Intermediaries Regulations and SEBI Circulars:

a) Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

b) Clause 12 (e) of Annexure-A of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 8.1.1 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

c) Clause 3.2 read with Clause 6.1.1.j of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

d) Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

e) Clause 1.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 6.1.1. (f) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

f) SEBI Circular MIRSD/CIR-26/2011 dated December 23, 2011 read with Clause 5.4 of Schedule III to SEBI (Intermediaries) Regulations, 2008 and Regulation 21(1) of SEBI (Stock Brokers) Regulations, 1992.

g) Clause B.2 of Schedule II of Regulation 9 of SEBI (Stock Brokers) Regulations, 1992.

h) Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 and Clause B (8) of Schedule II read with Regulation 9 (f) of SEBI (Stock Broker) Regulations, 1992.

i) Clause A (5) of Code of Conduct for Stock Brokers prescribed in Schedule II read with Regulation 9 (b) and 9 (f) of SEBI (Stock Brokers) Regulations, 1992.

76) In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of ***Chairman, SEBI vs. Shriram Mutual Fund*** *{[2006] 5 SCC 361}* wherein the Hon'ble Court had observed: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''*

77) Therefore, the aforesaid violations committed attract monetary penalty under Section 23D of SCR Act and Section 15HB of the SEBI Act upon Noticee. The text of provisions are reproduced hereunder:

Section 23 D of SCRA-

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

Section 15HB of SEBI Act: -

Penalty for contravention where no separate penalty has been provided: 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.

ISSUE III- If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act and 23J of SCRA?

78) While determining the quantum of penalty under SEBI Act and SCR Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act, and 23 J of SCR Act, 1956 respectively reads as under:

> ***<u>Factors to be taken into account by the adjudicating officer under SEBI Act</u>***
>
> ***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*
>
> ***<u>Factors to be taken into account by the adjudicating officer under SCR Act.</u>***
>
> ***23J.*** *While adjudging the quantum of penalty under section 23-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.*

79) The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failure, nor the same has been alleged by SEBI. As regard to the repetitive nature of the default, I find that the Noticee has not been penalized by SEBI in the past.

80) The evidence/observations on record against Noticee, ostensibly suggest the misuse of the accounts of its clients' funds, non-segregation of bank accounts, etc in my assessment cannot be taken leniently and such violations deserve to be adequately penalized. The very purpose of the said provisions is to deter wrong doing and promote ethical conduct in the securities market. I cannot ignore the fact that the Noticee was under a statutory obligation to abide by the provisions of the SCRA, SEBI Act, Rules and Regulations and Circulars / directions issued thereunder, which it failed to do during the IP. In this regard, it is pertinent to mention the following judgement of Hon'ble Securities and Appellate Tribunal (Hon'ble 'SAT'):

"*In Bezel Stock Brokers Pvt.Ltd. vs National Stock Exchange of India* *(Appeal No. 294 of 2018 decided on January 30, 2019) the Hon'ble SAT held as under: The appellant had failed to act in a diligent manner and had failed to protect the interest of his clients. It was found that the appellant had failed to ensure availability of clients' assets and misappropriated clients' funds to meet the proprietary obligation and, therefore, the appellant failed to perform its fiduciary duty. Using clients' funds is a misuse of clients' funds and securities and thus, the appellant was liable for imposition of penalty. We are further of the opinion, that considering the admission of the appellant that they had misused the client funds and securities the imposition of penalty of ` 15 lakhs over and above the amount indicated in Annexure 1 was justified in the given circumstances."*

81) Although the Noticee has stated that it had taken various corrective steps, I cannot lose sight of the fact that serious irregularities were committed by the Noticee during the aforementioned IP. The Noticee being a registered intermediary is expected to adhere to fair practices and maintain a high degree of professionalism in the conduct of its business, however, it is crystal clear from the preceding paragraphs that Noticee had acted in deliberate disregard of its obligations towards its clients. The violations as established above certainly deserve imposition of penalty on the Noticee. It is observed from the documents/submissions of the Noticee that it has become dormant from April 2021. Also, exchange had imposed penalty for few of

the violations. The same has been taken into consideration for imposing penalty under relevant provisions of SEBI Act and SCRA.

ORDER

82) Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in 15J of SEBI Act and Section 23J of the SCR Act, the purpose of SEBI Act and SCR Act, 1956 taking note of Section 15HB of the SEBI Act and 23D of SCR Act, and also taking into account judgment of the ***Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari*** (2019) 5 SCC 90 and in exercise of power conferred upon me under section 15I of the SEBI Act read with Rule 5 of the SEBI Rules, 1995 and Section 23 I of the SCR Act, 1956 read with rule 5 of the SC(R) Rules, I hereby impose following penalty under section 15HB of the SEBI Act and 23D of the SCR Act, 1956 on the Noticee:

Name of the Entity	Penalty Provisions	Penalty (Rs.)
Maxpro Asia (Noticee)	Section 23D of SCR Act, 1956	Rs 10,00,000/- (Rupees Ten Lakhs Only)
	Section 15HB of SEBI Act, 1992	Rs 5,00,000/- (Rupees Five Lakhs Only)

83) I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

84) 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. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

85) The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-3), Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C/7, "G" Block BKC, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." The Noticee shall also provide the following details while forwarding DD / payment information:

1. Case Name:	
2. Name of payee:	
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 and legal charges along with order details)	

86) In terms of the provisions of Rule 6 of the Adjudication Rules and Rule 6 of the SC(R) Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai **BARNALI MUKHERJEE**

Date: April 25 , 2024 **ADJUDICATING OFFICER**