BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/VV/PSS/2022-23/20791

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 & UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT,1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:
Aum Capital Market Private Limited
(PAN – AAACO7624B)

In the matter of
Aum Capital Market Private Limited

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings under Section 15HB of SEBI Act, 1992 and Section 23D of Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as **'SCR Act'**) against **Aum Capital Market Private Limited**, (hereinafter referred to as "**Noticee/Stock Broker")** for the alleged violations of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and Regulation 26(xiii), 26(xv), 26(xvi) of SEBI (Stock Brokers) Regulations, 1992 ('hereinafter referred to as '**Stock Broker Regulations'**).

B. APPOINTMENT OF ADJUDICATING OFFICER

2. CGM Ms.Asha Shetty was appointed as the Adjudicating Officer ("***AO***") vide order dated August 5, 2022 to inquire into and adjudge under Section 15HB of SEBI Act and Section 23D of SCR Act for the aforesaid alleged violations against

the Noticee. Subsequently, the Undersigned was appointed as Adjudicating Officer vide Order dated October 3, 2022 to inquire into and adjudge under Section 15HB of SEBI Act and 23D of SCR Act for the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated to the Undersigned vide communication order dated October 6, 2022.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. SEBI/HO/EAD-8/AS/GD/2022/48915/1 dated September 16, 2022 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('**SEBI Adjudication Rules**') and under Rule 4(1) of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, ('**SCR Adjudication Rules**'), to show cause as to why an inquiry should not be held and penalty be not imposed on the Noticee under section 15HB of the SEBI Act and Section 23D of SCR Act for the alleged violations of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 read with Regulation 26(xiii), 26(xv), 26(xvi) of Stock Broker Regulations.

4. The contents of the SCN are summarized as under :-

a) It was stated in the SCN that SEBI conducted inspection of the Noticee to verify the segregation of clients' funds and securities in compliance with SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 for the period April 2012 to December 30, 2014 ("**Inspection Period / IP**").

b) The findings of inspection were communicated to Noticee vide letter dated January 08, 2015 and Noticee furnished its reply vide letter dated January 22, 2015. SEBI did not find the comments/ explanation of Noticee satisfactory on the following grounds :-

Segregation of funds and securities of client's accounts

c) Several bank account statements relating to the Noticee were inspected for the period covered under inspection.

d) To ascertain whether clients funds are being mis-utilized by the broker, the segregation of pay in obligation of randomly chosen 18 days during the period of inspection on the basis of exposure taken by the clients' having net debit position, pro trades etc. on a particular day was inspected. The fund flow to meet the exchange obligation in case the clients having net debit position has pay in obligation was also inspected.

e) It was observed that settlement obligations were met from A/c No. 0099******5216 (settlement A/c.) held with HDFC Bank. Further, as per the practice of the Noticee, usually funds moved from A/c No. 00080******7943 (Client A/c) to above mentioned settlement account. In NSECM Segment pay-in obligation were met from settlement account (A/c. No.0099******7719 held with HDFC Bank) and fund was moved from client account (A/c. No.00080*****5845 held with HDFC Bank) to settlement account. It was found that mainly fund from client account was used to meet the exchange obligation.

f) Inspection findings show that there were clients having negative ledger balance or insufficient balance in ledger with pay-in obligation. However, the settlement obligations were met from the client account. Further there were some clients having positive ledger balance. Hence inspection findings indicate that pay-in obligation of clients having negative or insufficient ledger balance was met by the funds of clients having positive ledger balance.

g) Observations in respect of BSE Cash Market segment and NSE Cash Market segment are tabulated in Table 2 and 3 below:

Table 1: Pay-in Obligation and Ledger Balance in BSE CM:

Sr. no	Settlement no.	Date of Settlement	Client Details		
			Name (trading account no)	Pay in Obligation of client (Rs.)	Ledger Balance of Client (Rs.)
1	1314212W	03/02/14	BHIRAGACHA **************** LIMITED	10734311.00	8454601.00
2	1415033W	21/05/14	DINESH ********[D011	538178.00	-33.71
3	1415030W	16/05/14	LEXPORTEX ************LIMITED [L43]	442554.00	-505316.00
4	1415020W	02/05/14	VISTAR *************** LIMITED	2346358.00	10272.00

Table 2: Pay-in obligation and ledger balance in NSE CM

SI NO	Settlement no	Date of settlement	Client details		
			Name	**Pay in obligation of client (Rs.)**	**Ledge balance of client (Rs.)**
1	2012174N	13/09/12	RAHUL*******************A (R176)	320596.00	3465.79
2			HARIPRASAD ************** FAMILY (H09)	247602.00	-1832452.90
3	2012160N	24/08/12	NURITA *************** [A438]	449046.00	141308.79
4	2013052N	15/03/13	NIRMAL ********************** KUMAR (HUF) [N04	10067640.00	6.15
5			PUSHPA ************ [P287]	601859.00	-368784.40
6			CHAND ************** (C75)	489605.00	-232525.00
7	2013166N	02/09/13	SHREY ************ [S802)	31426141.00	31216745.47
8			DORNFAB ********************** LTD [D04]	424959.00	226877.01
9			RUMA ************ [R425]	283513.00	-316617.07
10	2013065N	05/04/13	NIRMAL ************************** KUMAR (HUF) (NO4)	8003895.00	0
11	2014012N	20/01/14	THIRD ******************** LTD (T33)	2981706.00	689938.49
12	2013143N	29/07/13	CHAND ***************** [C75]	736662.00	216281.30
13			PRASAD **************** (P58)	470630.00	0
14	2014094N	23/05/14	DEO **************** [D38]	3032853.00	156426.06
15			MOHIT **************** [M406]	633583.00	72979.47
16	2014097N	28/05/14	WELKIN ********************* [W02)	2114912.00	-93188.30
17	2014067N	10/04/14	PAMELA *************** [P283]	1040215.00	-527845.77
18			PUSHPA *************** [P287]	772743.00	-67.42
19			LEXPORTEX **************** LTD (L43)	691169.00	-61341.53
20	2014108N	12/06/14	NIRMAL ********************* KUMAR (HUF) (NO 4)	2866900.00	-32.94
21			HARIPRASAD ***************** FAMILY NIDHI (H09)	1431408.00	-582547.06
22			CHAND *********************** HUF(C77)	458014.00	-324707.00
23			MAYUR ******************* [M66]	1230656.00	179085.32
24			PUSHPA ********************[P287]	890338.00	-831037.56
			PUNDALIK ************** [P52]	625350.00	5878.00

h) From the above, inspection findings indicate that as a regular practice, the Noticee used one client's fund to meet other clients pay-in obligation whoever has negative or insufficient ledger balance.

i) In view of the above, it is alleged that the Noticee has violated the provisions of SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and Regulation 26(xiii), 26(xv) and 26(xvi) of SEBI (Stock Brokers) regulations, 1992.

j) The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under section 15HB of the SEBI Act and 23D of SCR Act,1956.

5. I note, from available records, that the SCN was duly delivered to the Noticee. Noticee has filed reply dated September 28, 2022. Opportunity of personal hearing in the matter was provided to the Noticee on October 20, 2022 which was attended by the authorized representatives on behalf of the Noticee. Noticee has also made Additional submissions vide e-mail dated October 21, 2022. I note that principles of natural justice have been complied with in the instant matter.

6. The Noticee vide his letter dated September 28, 2022 and email dated October 21, 2022 has made his submissions. The key submissions made by the Noticee are summarized as under:-

a) Different client accounts for both fund and securities are maintained for Exchangewise and segment wise operations at Broker's end. Client bank and beneficiary accounts are used only for the purpose of receiving and paying funds/securities from or to clients. The own/self accounts are used exclusively for payment of expenses and other payments of the Noticee.

b) Instead of using one client's fund for other client's obligation, several times, Noticee has used its own funds to meet the Exchange obligation to meet clients' fund pay-in obligation in case of delay in payment by clients. The Noticee has not transferred clients' funds to any other account.

c) In cases of clients having negative ledger balances, Noticee used to fulfil the clients obligation by its own fund instead of using other clients' fund.

d) Noticee has also submitted excerpts of several bank statements highlighting transfer of amounts from self account to settlement accounts in respect of the clients mentioned in table 2 and 3 above.

e) Noticee vide his additional submissions has averred that SEBI had also conducted inspection of the Noticee for the period from 01.04.2019 to 31.08.2019 and no adverse action was initiated against the Noticee. Further, Noticee has also attached latest status reports from National Stock Exchange("***NSE***") and Bombay Stock Exchange("***BSE***") dated 14.10.2022 and 13.10.2022 respectively and has stated that no penalty or disciplinary action was taken or initiated against the Noticee.

D. REVELANT PROVISIONS

7. It is relevant to reproduce the provisions of laws which have been attracted and invoked in the SCN and the same are quoted here under:

SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993:

"Regulation of Transactions between Clients and Brokers-
(1) It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their 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."

Stock Broker Regulations:
"Liability for monetary penalty-
26. *A stock broker shall be liable for monetary penalty in respect of the following violations, namely:*

(xiii) *Failure to segregate his own funds or securities from the client's funds or securities or using the securities or funds of the client for his own purpose or for purpose of any other client.*

(xv) *Failure to comply with directions issued by the Board under the Act or the regulations framed thereunder.*

(xvi) *Failure to exercise due skill, care and diligence."*

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.

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."*

E. ISSUES

8. I have carefully perused the allegations levelled against the Noticee in the SCN, the replies of the Noticee and also the documents/evidence available on record. The issues that arise for consideration in the present case are :-

   i) Whether Noticee is in violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and Regulation 26(xiii), 26(xv), 26(xvi) of Stock Broker Regulations?
   ii) If the answer to Issue No.(i) is in affirmative, do the violations, if any on the part of the Noticee would attract monetary penalty ?
   iii) If the answer to Issue No.(ii) is in affirmative, what would be quantum of the monetary penalty that should be imposed upon the Noticee ?

F. CONSIDERATION AND FINDINGS

Issue no.(i)

9. It is alleged in the SCN that the Noticee moved funds from A/c no.00080*****7943 ("***BSE Client Account***") to A/c no. 0099*****5216 ("***BSE Settlement Account***"). Further, it is alleged that exchange obligation were met from client account. The Noticee in his reply has averred that Client bank and beneficiary accounts are used only for the purpose of receiving and paying funds/securities from or to clients and that own/self accounts are used exclusively for payment of expenses and other payments of the Noticee. The Noticee has also submitted that the Noticee has not transferred clients' funds to any other account.

10. The Noticee has submitted bank statements for different dates highlighting the transactions made by him from his self account to the settlement account. Bank

statement of BSE Settlement Account for February 3, 2014 as submitted by the Noticee is reproduced hereunder :-

Date	Description	Debits	Credit	Balance
03-02-2014	BSE Client Acc 00080*****7943		2,00,000	1,02,50,348
03-02-2014	BSE Client Acc 00080*****7943		54,20,000	1,56,70,348
03-02-2014	PAY_IN : DR0****4212	1,56,60,357		9,991
03-02-2014	Self Account 00080*****1914		15,000	24,991
03-02-2014	Shortage Recovery DR01***4212	14,195		10,796
03-02-2014	Self Account 00080*****1914		54,20,000	54,30,796
03-02-2014	BSE Client Acc 00080*****7943	54,20,000		10,796

11. I note from the above transactions that the Noticee has transferred amounts of Rs.2,00,000 and Rs.54,20,000 from BSE Client Account to BSE Settlement Account. Pursuant to the said two transactions, an amount of Rs.1,56,60,357 was debited from the BSE Settlement Account towards pay-in obligation. Further, the Noticee has transferred an amount of Rs.54,20,000 from his self account to the BSE Settlement Account and the said amount was transferred back into the BSE Client Account.

12. Further, from bank statement of the BSE Settlement Account for May 16, 2014 , I note that an amount of Rs.25,00,000/- was transferred from BSE Client Account to BSE Settlement Account.

13. It is also pertinent to reproduce the bank statement of BSE Settlement Account for May 2, 2014 as submitted by the Noticee as hereunder :-

Date	Description	Debits	Credit	Balance
02-05-2014	Pay-out DR014***20		4,33,92,538	4,33,92,538
02-05-2014	BSE Client Acc 00080*****7943	4,33,75,000		17,538
02-05-2014	BSE Client Acc 00080*****7943		11,00,000	11,17,538
02-05-2014	Self Account 00080*****1914		15,00,000	26,17,538
02-05-2014	Pay-in DR014***21	25,45,135		72,403

14. I note from the above transactions that the Noticee has transferred Rs.4,33,75,000 to BSE Client Account from BSE Settlement Account after receiving an amount of Rs. 4,33,92,538 as payout. Later, the Noticee has again transferred amount of Rs.11,00,000 from BSE Client Account to the Settlement Account and used this amount for payment of payin obligation.

15. I have also taken note of statements relating to NSE Settlement Account (0099******7719). I have noted that similar pattern of transaction is also visible in the NSE Settlement Account. I find it appropriate to reproduce transactions relating to the said account for April 5, 2013 as submitted by the Noticee :-

Date	Description	Debits	Credit	Balance
05-04-2013	NSE Client Account 00080*****5845		57,61,000	58,94,953
05-04-2013	Self Account 00080*****1914		45,45,000	1,04,39,953
05-04-2013	Self Account 00080*****1914		40,00,000	1,44,39,953
05-04-2013	Pay-in N****065	1,42,88,815		1,51,138

16. I note from the above transactions that the Noticee has transferred an amount of Rs.57,61,000 from NSE Client Account to the NSE Settlement Account. Further, together with the amount received from self account, the Noticee has made payment for pay-in obligation.

17. Another instance of moving funds of Rs.6,00,000 from client account for payment of exchange pay-in obligation can be seen from the statement of NSE Settlement account from the below transactions :-

Date	Description	Debits	Credit	Balance
18-01-2014	NSE Client Account 00080*****5845		6,00,000	90,59,945
20-01-2014	Self Account 00080*****1914		43,00,000	1,33,59,945
20-01-2014	Pay-in N20***12	1,30,53,361		3,06,584

18. The above mentioned bank statements and the transactions clearly go to show that the Noticee moved funds from client accounts to the settlement account as

a practice. Further, from the pattern of transactions it becomes evidently clear that the Noticee used funds from the client accounts to meet the exchange obligation.

19. The averments made by the Noticee that Client bank and beneficiary accounts are used only for the purpose of receiving and paying funds/securities from or to clients, is incorrect in light of the aforementioned transactions. I note that the Noticee has failed to segregate his own funds from the clients' funds.

20. It is also alleged in the SCN that as a regular practice, the Noticee used one client's fund to meet other client's pay-in obligation whoever has negative or insufficient ledger balance. The SCN also mentions particulars relating to pay-in obligation and ledger balance of several clients having negative ledger balance.

21. I note that the Noticee has not disputed the aforementioned particulars of the clients having negative or insufficient ledger balance. The Noticee has averred in his reply that in cases of clients having negative ledger balances, Noticee used to fulfil the clients obligation by its own fund instead of using other clients' fund.

22. I note that the aforesaid argument of the Noticee has already been proven false from the perusal of the aforementioned bank transactions which clearly confirm that the Noticee has on several occasions used money from client accounts to meet exchange pay-in obligations. Further, I note that several clients of the Noticee were having negative or insufficient ledger balance. In such circumstances, the act of the Noticee of using amounts from client accounts to meet exchange payin obligation, proves that the Noticee used one client's fund to meet other clients' pay-in obligation who had negative or insufficient ledger balance.

23. I note that the Noticee has failed to exercise due skill, care and diligence and has also failed to comply with the directions issued under the regulations.

24. In view of the above, I conclude that that the Noticee has violated the provisions of SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and Regulation 26(xiii), 26(xv) and 26(xvi) of SEBI (Stock Brokers) regulations, 1992.

Issue no.(ii)

25. Hon’ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 } held that “*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*.’’

26. In view of the above, I conclude that the Noticee has become liable for monetary penalty under Section 15HB of the SEBI Act for violation of the provisions of SEBI circular no.SMD/SED/CIR/93/23321 dated November 18, 1993 and under section 23D of SCR Act for violation of provisions of Regulation 26(xiii), 26(xv) and 26(xvi) of SEBI (Stock Brokers) regulations, 1992

Issue no. III

27. While determining the quantum of penalty under section 15HB of SEBI Act and section 23D of SCR Act, it is important to consider the factors stipulated in Section 15J of SEBI Act and Section 23J of SCT Act, which reads as under:

> **“15J - Factors to be taken into account by the adjudicating officer**
> *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.”*
>
> **“23J - Factors to be taken into account by the adjudicating officer**
> *While adjudging quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely:-*
> *(d) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(e) the amount of loss caused to an investor or group of investors as a result of the default;*

(f) the repetitive nature of the default."

28. Having regard to the factors listed in section 15J of SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules and in the light of Supreme Court's judgment in the matter of SEBI vs Bhavesh Pabari [(2019) 18 SCC 246], it is noted from the material available on record that any quantifiable gain or unfair advantage accrued to Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. There are no investors' complaints on record arising out of such defaults. With respect to repetitive nature of default, I note from the available record that there are no previous violations by the Noticee. Further, from the reply of the Noticee it is noted that SEBI had also conducted inspection of the Noticee for the period from 01.04.2019 to 31.08.2019 and no adverse action was initiated against the Noticee. The Noticee has also submitted status reports from NSE and BSE dated 14.10.2022 and 13.10.2022 respectively, a perusal of which goes to show that no adverse remarks against the Noticee are made in the said reports by NSE and BSE. I am inclined to consider the aforesaid facts as mitigating factors in imposing penalty on the Noticee. Therefore, taking into account the aforesaid factors and considering the facts and circumstances of the case, I am of the view that a penalty of Rs.1,00,000/- will be commensurate with the violations committed by the Noticee.

G. ORDER

29. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules and under section 23-I of SCR Act read with Rule 5 of SCR Adjudication Rules, I hereby impose a penalty of Rs.1,00,000 (Rupees One Lakh) on the Noticee Aum Capital Market Private Limited under Section 15HB of SEBI Act and section 23D of SCR Act for violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and Regulation 26(xiii), 26(xv), 26(xvi) of Stock Broker Regulations.

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

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

31. The Noticee shall forward the said demand draft or the details/ confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-1, DRA-3, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

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

33. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order shall be sent to the Noticee and also to the Securities and Exchange Board of India.

Date: October 27, 2022
Place: Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER