BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/SV/RM/2024-25/30822)

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

In respect of:

Noticee No.	Name of the Noticee	PAN
1	Nirmal Bang Securities Pvt. Ltd (Stock Broker)	AAACN7369L

In the matter of inspection in respect of Nirmal Bang Securities Pvt. Ltd

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ('hereinafter referred to as **'SEBI'**) conducted inspection in respect of Nirmal Bang Securities Pvt. Ltd (hereinafter referred to as the **'Noticee/ Stock Broker / Trading Member/ TM'**). Noticee is registered with SEBI as a Stock Broker (Registration No.: INZ000202536). Thematic Inspection of books of account and other documents of Noticee in the matter of Verification of Authorised Persons (APs) was conducted by SEBI officials on August 22-August 24, 2023 for the inspection period from April 01, 2022 to May 31, 2023 (hereinafter referred to as **'inspection period'**).

2. The findings / observations made during the course of inspection were recorded as Inspection Report. Since a Stock Broker is responsible for all acts of omission and commission of its authorised person(s) and/or its employees, the inspection findings / observations regarding Noticee's APs were communicated to the Noticee vide SEBI letter dated December 21, 2023. The Noticee submitted its comments / explanations on the aforesaid findings / observations of the inspection vide its letter dated December 29, 2023.

3. During post inspection analysis, SEBI did not find the comments / explanations of the Noticee satisfactory on 3 inspection findings / observations regarding its APs, and Noticee being responsible for all acts of omission and commission of its authorised person(s), and/or its employees, was allegedly observed to be in non-compliances of Rules, Regulations and Act.

4. Based on the findings of inspection, SEBI initiated adjudication proceedings under Section 15HB of SEBI Act, 1992 against the Noticee for violating the provisions of the following Act, Rules, Regulations and Circulars:
   4.1. Para no. (III) of SEBI circular no: SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated 22nd March 2018, BSE Notice No: 20180323-57 dated 23rd March 2018, BSE Notice No: 20220325-58 dated 25th March 2022.
   4.2. Para no. (III) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, Regulation 3.2.1 of NSEIL CM Regulation, Regulation 3.4.1 of NSEIL FO Regulation.
   4.3. Point No. (7) of Annexure -1 of SEBI Circular No. MIRSD/DR-1/Cir- 16/09 dated November 06, 2009, BSE Notice No: 20191018-43 dated October 18, 2019, BSE Notice No: 20211021-38 dated October 21, 2021.
   4.4. Para no. (III) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, Regulation 3.2.1 of NSEIL CM Regulation, Regulation 3.4.1 of NSEIL FO Regulation.

APPOINTMENT OF ADJUDICATING OFFICER

5. SEBI appointed the undersigned as the Adjudicating Officer, vide order dated March 21, 2024, under Section 19 of the SEBI Act, 1992 read with Section 15-I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules, 1995'**), to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. Show Cause Notice bearing reference no.- SEBI/HO/EAD-8/SKV/RM/15200/1-2/2024 dated April 25, 2024 (hereinafter referred to as **'SCN'**) was issued to the Noticee in terms of the provisions of Rule 4(1) of the SEBI Adjudication Rules read with Section 15-I of the SEBI Act, requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed upon the Noticee under Section 15HB of the SEBI Act for the alleged violations. I note that SCN was issued to Noticee, and was duly served upon the Noticee and it was acknowledged by the Noticee. The Noticee submitted response to SCN vide email dated May 09, 2024.

7. In the interest of natural justice, vide hearing notice dated May 14, 2024 an opportunity of hearing on May 27, 2024 was granted to the Noticee. Samyak Pati, Advocate, RHP Partners appeared as Authorised Representative for Noticee (hereinafter referred to as **"AR"**) and attended the hearing on May 27, 2024 through video conference and reiterated the submissions made by the Noticee vide letter dated May 09, 2024. Further AR made additional submission vide letter/email dated May 31, 2024.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee in the SCN, submissions made by the Noticee and material available on record. The issues that arise for consideration in the present case are as follows:

   I. Whether the Noticee has violated the provisions of the Act, Regulations and Circulars as indicated at Para 4?

   II. Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act?

   III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules?

9. Before proceeding further, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

<u>SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018</u>

Prevention of Unauthorised Trading by Stock Brokers

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III. *To further strengthen regulatory provisions against un-authorised trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of:*

a. Physical record written & signed by client,
b. Telephone recording,
c. Email from authorised email id,
d. Log for internet transactions,
e. Record of messages through mobile phones,
f. Any other legally verifiable record.
When a dispute arises, the broker shall produce the above mentioned records for the disputed trades. However for exceptional case such as technical failure etc. where broker fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt/payment of funds/securities by client in respect of disputed trade, etc. shall also be considered.

<u>BSE Notice No. 20180323-57 dated March 23, 2018</u>

SEBI vide its circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, consolidates and updates the requirement/obligations with regard to *prevention of Unauthorised Trading by Stock Brokers. A copy of the SEBI circular is enclosed herewith as Annexure.*

The earlier circulars on the same subject mentioned in Para 1 of this Master Circular stand rescinded.

This master circular shall continue to be effective from April 01, 2018.

Stock Brokers are advised to take note of the same.

National Stock Exchange (Futures & Options Segment) Trading Regulations

3.4 TRADE OPERATIONS

3.4.1 Trading Members shall ensure that appropriate confirmed order instructions are obtained from the constituents before placement of an order on the NEAT system and shall keep relevant records or documents of the same and of the completion or otherwise of these orders thereof. Notwithstanding the above, wherever the order instructions are received from clients through the telephone, Members shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records.

SEBI Circular No. MIRSD/DR-1/Cir- 16/09 dated November 06, 2009

Annexure-1 Regulatory Framework for Market Access through Authorised Persons

7. Obligations of Stock Broker

a) The stock broker shall be responsible for all acts of omission and commission of his authorised person(s) and/or their employees, including liabilities arising there from.

b) If any trading terminal is provided by the stock broker to an authorised person, the place where such trading terminal is located shall be treated as branch office of the stock broker.

c) Stock broker shall display at each branch office additional information such as particulars of authorised person in charge of that branch, time lines for dealing through authorised person, etc., as may be specified by the stock exchange.

d) Stock broker shall notify changes, if any, in the authorised person to all registered clients of that branch at least thirty days before the change.

e) Stock broker shall conduct periodic inspection of branches assigned to authorised persons and records of the operations carried out by them.

f) The client shall be registered with stock broker only. The funds and securities of the clients shall be settled directly between stock broker and client and all documents like contract note, statement of funds and securities would be issued to client by stock broker. Authorised person may provide administrative assistance in procurement of documents and settlement, but shall not issue any document to client in its own name. No fund/securities of clients shall go to account of authorised person.

g) On noticing irregularities, if any, in the operations of authorised person, stock broker shall seek withdrawal of approval, withhold all moneys due to authorised person till resolution of investor problems, alert investors in the location where authorised person operates, file a complaint with the police, and take all measures required to protect the interest of investors and market.

NSEIL CM Regulation

3.2 TRADE OPERATIONS

3.2.1 Trading Members shall ensure that appropriate confirmed order instructions are obtained from the constituents before placement of an order on the system and shall keep relevant records or documents of the same and of the completion or otherwise of these orders thereof. Notwithstanding the above, wherever the order instructions are received from clients through the telephone, Members shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records.

10. For ***BSE Notice No. 20191018-43 dated October 18, 2019,*** **BSE Notice No: 20211021-38 dated October 21, 2021** and **BSE Notice No. 20220325-58 dated March 25, 2022** – no specific clause(s) or paragraph(s) is alleged to be violated in the SCN, hence entire circulars are referred as per the facts and circumstances of the discrepancies outlined in the SCN.

11. Based 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 the Noticee has violated the provisions of the Act, Regulations and Circulars as indicated at Para 4?

12. At the outset, I find that alleged violations to in the instant matter are in respect of three Authorised Persons of the Noticee, and the same are dealt one by one in the following paragraphs:

Name of AP : Vijay Manoharlal Bubna
((AP Registration Numbers - AP- 0104980182191 (BSE) & AP-110577811 (NSE))

13. Findings of Inspection: From 50 sample clients, 5 clients viz. that client codes DAD011, L120143, L417, RVB019, RVB031 were selected who had executed trades across exchanges and their trade log were examined. Pursuant to the same, following was observed:

13.1. For the client code L120143, client requested to sell 4000 quantity but order was partially executed for 3300 quantity only, but confirmation was given for execution of 4000 quantity.

13.2. for the client code L417, client requested to sell 4000 quantity for Union bank but order got partially executed for 3300 quantity but confirmation was given for execution of 4000 quantity, for J&K bank, confirmation was given for the execution for 2500 quantity but order was partially executed for 2347 quantity only.

13.3. For the client code, RVB019, dealer did not mention the client code or client name.

13.4. For the client code RVB031, pre trade confirmation, the details such as client code, name was not confirmed.

14. In view of the above, it was alleged that the Noticee has violated Para no. (III) of SEBI circular no: SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated 22nd March 2018, BSE Notice No: 20180323-57 dated 23rd March 2018, BSE Notice No: 20220325-58 dated 25th March 2022.

15. <u>In this regard Noticee in it reply has inter-alia contended the following:</u>

15.1. <u>For the client code L120143</u>: There is no discrepancy in the order confirmation as trade for sale of 4000 shares of Union Bank of India in UCC L120143 was duly carried out as per the order placed and confirmed. The digitally signed contract note in respect of this trade is placed on records.

15.2. <u>For the client code L417</u>: At the outset, there is an infirmity in the allegation. It is clear from the pre-trade confirmation that order was placed for sale of 3000 shares of Union Bank of India and not 4000 shares as alleged in the Show Cause Notice. There is no discrepancy in the order confirmation as trade for sale of 3000 shares of Union Bank of India in UCC L417 was duly carried out as per the order placed and confirmed. There is also no discrepancy in the order confirmation as trade for sale of the 5000 shares of J&K Bank in UCC L417 was duly carried out as per the order placed. It is clear from the pre-trade confirmation recording that in relation to the order placed, trade for 2500 shares was executed and order for the remaining quantity of 2500 shares was pending. The digitally signed contract note in respect of this trade is placed on records.

15.3. For the client code RVB019 and RVB031: The crux of the allegation pertains to non – verification of identity qua the clients in whose account trades are sought to be placed. The Client bearing UCC RVB019 has authorised one Mr. Vijay Choudhary to trade on its behalf and in this regard, calls are placed through the mobile number +91-8591423779. The Client bearing UCC RVB031, being a corporate entity, has authorised inter - alia one Mr. Samir Shah to trade on its behalf and in this regard, calls are placed through the mobile number +91-9825005929. RVB031, has authorised three individuals, namely Sagar Samir Shah, Shweta Samir Shah and Samir Rohitbhai Shah. Admittedly, the mobile number belongs to Sagar Samir Shah who is one authorised persons and the said number is being utilized by Mr. Samir Shah, who is also authorised by the entity, for the purpose of trading.

15.4. Noticee, in the reply, has enclosed the authority letters in respect of these client accounts evidencing the above. It is submitted that these clients are regular traders through Noticee and the AP is familiar with the persons placing these orders i.e., the authorised persons of these clients in the course of their association. Furthermore, being regular traders, multiple orders are placed on behalf of these clients. In view of both familiarity with the authorised persons of the clients as well as the volume of orders placed on any given day, the client code or client name was not confirmed. It is submitted that there is no material irregularity in these instances and no adverse inference of any violation is warranted. Without prejudice to the above, Noticee is cognizant regarding its compliance obligations while placing orders and maintaining adequate pre-trade confirmations. Noticee is adequately educating its APs to ensure that these formal confirmations are duly taken for each order. As such, it is humbly prayed that no penal action is warranted in respect of these instances.

15.5. Further, the Noticee has contended that the authority letter is not a standardized documentation unlike the KYC and Account Opening form and therefore Noticee has adopted a format where relevant information and details about the concerned account, account holder and the person so authorised to operate the account are set out. Furthermore, the authority letters are obtained by Noticee at any time after the account has been obtained, pertinently when such an authority is granted by the client to the concerned person. As such, there is no requirement to provide the same to the exchange as part of the KYC and Account Opening documentation of a client and is produced by Noticee as and when sought for by SEBI and / or the exchanges.

16. From the documents and information available on record, for the client code L120143, it is noted from the call recording that the client requested to sell 4000 quantity of Union Bank of India Shares, and confirmation was given for execution of 4000 quantity. Further, from the contract note dated August 22, 2023 it is observed that the order was completely executed. Hence, there is no discrepancy/non-compliance observed as alleged in the SCN.

17. For the client code L417, it is noted from the call recording that the client requested to sell 3000 quantity for Union bank, and its execution confirmation was provided over call. Further, the client placed trade for sale of the 5000 shares of J&K Bank, and over call it was informed that trade for 2500 shares was executed and order for the remaining quantity of 2500 shares was pending. Further from the contract note dated August 22, 2023 it is observed that the orders were executed as directed. Hence, there is no discrepancy/non-compliance observed as alleged in the SCN.

18. For the client code RVB019 and RVB031, essentially it is alleged that the clients were not identified over calls by the AP. In this regard, for the client code RVB019 from the authority letter attached with the reply by the Noticee, it is noted that the client Mr. Yash Chaudhary authorised Mr. Vijay Chaudhary (RVB032) to transact/deal/place orders on his behalf. Further from the client recordings it is observed that the orders were placed by the mobile number 85971423779. I note that the caller was not identified over the call by the AP. Further, there is no

supporting documents to substantiate that the mobile number 85971423779 is used by Mr. Vijay Chaudhary. I note that the client confirmation was not done by the AP during the call before taking the confirmation of placement of the trade over phone.

19. Further, for the Client code RVB031, from the call recording it is observed that the orders were placed by the mobile number 9825005929. Further, in its reply the Noticee along with supporting documents has submitted that the Client code RVB031 is a corporate entity, and has authorised three individuals, namely Sagar Samir Shah, Shweta Samir Shah and Samir Rohitbhai Shah, and the aforesaid mobile number belongs to Sagar Samir Shah and is being utilized by Mr. Samir Shah, who is also authorised by the entity, for the purpose of trading. I note that the client confirmation was not done by the AP during the call before taking the confirmation of placement of the trade over phone.

20. In this regard, I note that in both the instances for client codes RVB019 and RVB031, the clients were not confirmed by the AP, maybe because the calls were from the mobile numbers of the individuals authorised by respective clients.

21. Further, I note that SEBI circular no: SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated 22nd March 2018, BSE Notice No: 20180323-57 dated 23rd March 2018 inter alia mandates that all brokers shall execute trades of clients only after keeping evidence of the client placing such order. In this regard, I note that in above two instances the call records were maintained, but there were other discrepancies like non-confirmation of client ID etc. as detailed above. In this regard, I observe that the discrepancies outlined could be termed as lack of due diligence at best, which is not alleged in the SCN, hence not before undersigned for adjudication.

22. Further the activities prohibited by exchange or lack of oversight by the Noticee over its AP in respect of aforementioned instances in the light of BSE Notice No. 20220325-58 dated March 25, 2022 is not outlined in the SCN nor noticed by undersigned during the perusal of call recordings, contract notes and other supporting documents available on records.

23. In view of the discussion above, it is not established that the Noticee violated Para no. (III) of SEBI circular no: SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated 22nd March 2018, BSE Notice No: 20180323-57 dated 23rd March 2018, BSE Notice No: 20220325-58 dated 25th March 2022.

<u>Name of AP: Upendra Kantilal Doshi</u>
<u>(AP Registration Numbers - AP-0104980114157 (BSE) & AP-1105151941 (NSE))</u>

24. <u>Findings of Inspection:</u> It was observed that pre-order confirmation for 30 trades were not maintained for executed trades (30 instances) out of 30 sample trades checked. In this regard, Noticee in reply to inspection findings had inter alia submitted that AP Mr. Upendra Doshi is associated with them for more than 15 years. Further, the said 30 trades were executed by Mr. Upendra Kantilal Doshi himself who is joint holder and traded on behalf of his family member i.e. his wife (A1200 –Alka Upendra Doshi) and his daughter (V1200 – Vidhi Upendra Doshi). Copy of client master for both his wife and his daughter were placed on records.

25. In this regard, it was observed that Noticee had not submitted voice recording, or any other documentary evidence regarding any authorization provided by wife/ daughter to place trades on behalf of them. In view of the same, it was alleged that the Noticee violated Para no. (III) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, Regulation 3.2.1 of NSEIL CM regulation, Regulation 3.4.1 of NSEIL FO regulation

26. In this regard Noticee in it reply has contended the following: The Show Cause Notice has alleged that that the AP has not maintained pre – trade confirmation in respect of 30 sample trades in UCCs A1200 and V1200. During the course of the Thematic Inspection, Noticee had clarified that UCCs A1200 and V1200 belonged to Alka Doshi and Vidhi Doshi who are the wife and daughter respectively of the AP himself. It was further clarified that Upendra Kantilal Doshi is a joint holder in both the demat accounts and in support of the same, Noticee had provided the NSDL client master data. Further, the authority letters authorizing Mr. Upendra Doshi to trade on behalf of his wife and daughter is also placed on records. Thus it is demonstrated that Upendra Doshi was authorised to trade in UCCs A1200 and V1200.

27. It was alleged in the SCN that the AP, Mr. Upendra Kantilal Doshi, did not maintain the confirmation or authorization for 30 trades executed by client Alka Upendra Doshi (client code - A1200) and Vidhi Upendra Doshi (client code V1200).

28. In this regard, Noticee has contended that Alka Upendra Doshi (client code - A1200) is wife of Mr. Upendra Kantilal Doshi the AP and Vidhi Upendra Doshi (client code V1200) is the AP's daughter. Further, the AP is the joint holder of the accounts with aforesaid clients and traded on behalf of them since he is also authorised by his wife and daughter. In support the client master and authority letters are placed on the records.

29. In this regard, I note that the SEBI circular no: SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated 22nd March 2018 is intended to prevent unauthorised trading by Stock Brokers, by mandating Stock Brokers that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which the broker shall produce in case the client dispute the trades executed.

30. In this regard, I note that the AP was himself one of the account holders of the accounts for which the trades were placed. Further, the respective joint holders (wife and daughter) in the accounts authorised the AP for placing the order. Further, it is contended that the AP placed the trades for the impugned sample trades. Since, the AP had himself placed the trades in his accounts, it is not possible that the AP could place trade orders with himself for execution through telephone call, however the Noticee could have kept the physically signed records by himself for placement of trades. It is noted that there is no such evidence placed on records.

31. I also note that the intention of Para no. (III) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, Regulation 3.2.1 of NSEIL CM regulation, Regulation 3.4.1 of NSEIL FO Regulation, is to prevent the unauthorised trading by brokers, by mandating that all brokers shall execute trades of clients only after keeping evidence (as specified) of the client placing such order, which the broker shall produce in case the client dispute the trades executed. In the aforesaid instances since the AP has placed trades in his joint accounts with his family members, it is not clearly established how unauthorised trades were not prevented. Further, there is no other instance illustrated in the inspection report wherein it is showcased that the AP did not maintain the evidences for the trades placed by other clients.

32. In view of the discussion above, it is not established that the Noticee or its AP violated Para no. (III) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, Regulation 3.2.1 of NSEIL CM regulation, Regulation 3.4.1 of NSEIL FO Regulations.

Jatin Bhanushali
(AP Registration Numbers- AP-0104980159302 (BSE) & AP-1105101461 (NSE))

33. Findings of Inspection: It was observed that there was no display of mandatory disclosures i.e. Risk disclosure, SEBI registration certificates, Escalation Matrix,

Notice board, Sign Board of the Noticee etc. at Bhandup address; Complaint register was not maintained by the AP; Notice board of the Trading Member containing all details was not displayed. Hence it was observed that the Noticee submitted incorrect details to the Exchange as given below:

34. AP Inspection report submitted to Exchange for the quarter January to March 2023. Wherein member had mentioned the following statements:

34.1. Date of inspection: 22.03.2023

34.2. Display of Notice Board –Yes

34.3. Maintenance of Visitor Register-Yes

35. Further it was noted that there was no repairing work carried out during the on-site inspection as contended by the Noticee. In view of the above, it was alleged that the Noticee has violated Point No. (7) of Annexure -1 of SEBI Circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009, BSE Notice No: 20191018-43 dated October 18, 2019, BSE Notice No: 20211021-38 dated October 21, 2021.

36. Further, no records of order placement were maintained for the orders placed by dealer Manoj Rana of Jatin Bhanushali. On verification it was observed that Pre-order confirmation for 20 trades were not maintained for trades executed (20 instances) out of sample 20 trades checked. In view of the above, it was alleged that the Noticee has violated Para no. (III) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, Regulation 3.2.1 of NSEIL CM regulation, Regulation 3.4.1 of NSEIL FO regulation.

37. <u>In this regard Noticee in it reply has contended the following:</u>

37.1. The allegation that Noticee has submitted an incorrect report pertaining to its inspection of the AP Jatin Bhanushali is untrue. Noticee in its reply has enclosed the Inspection Report dated March 22, 2023, which contained some photographs evidencing the fact that not only was the inspection was duly carried out but, pertinently, that the mandatory disclosures were duly displayed in the AP's premises. Noticee had in a bona fide manner informed SEBI that such disclosures may have been taken down due to certain repairs being undertaken at the APs premises. It is respectfully submitted that for certain exigent reasons, such disclosures were not in display at the time of the inspection team's visit. However, the same neither vitiates the fact that such disclosures did in fact exist for the purpose of displaying in compliance of the requirements under SEBI Circular dated November 6, 2009, nor does it take away from the veracity of Noticee's Inspection Report which evidences examples of such disclosures being in display during Noticee's inspection at the relevant time.

37.2. For the purposes of transparency and fair conduct, Noticee once again carried out an inspection of the APs premises on April 29, 2024, i.e., after the Show Cause Notice was issued when such an allegation was levelled. In this inspection, Noticee has once again inspected and ensured that these disclosures were duly displayed. Noticee, in its reply, has supplied photographs demonstrating this compliance.

37.3. Insofar as second count of allegation, Noticee had clarified in its submissions on the findings of the Thematic Inspection that amongst the five UCCs identified, VBJ005 and VBM007 belonged to the AP Jatin Bhanushali and his file Meghana Bhanushali, and he was authorised to trade on behalf of his wife.

37.4. SEBI had found the above submissions unsatisfactory as no evidence of authorization by Meghana Bhanushali was provided, however, Noticee in its reply to the Show Cause Notice has enclosed the authority letter in favour of Jatin Bhanushali. It is reiterated that while Noticee ought to have provided the authority letter at the inspection stage, it is nevertheless a demonstrable fact that Jatin Bhanushali was authorised to trade in his wife's account.

37.5. Whereas, in respect of the remaining clients i.e., (a) Dharmesh Bhanushali HUF – JDB017; (b) Sumeet Subhash Aggarwal – JDB050; (c) Mamta Sumeet Aggarwal – JDB060, Noticee had clarified inter - alia that the order for such trades were placed on mobile phone of the dealer and therefore there was no pre-trade consent call recording.

37.6. It is necessary at this juncture to state and clarify that SEBI has noted Noticee's submissions regarding this allegation, in paragraphs 21 to 23 of the Show Cause Notice, and SEBI has restricted its observations and allegations only in respect of Meghana Bhanushali, in paragraph 26 of the Show Cause Notice.

37.7. Without prejudice to the same, in the interest of transparency, Noticee in its Reply to the Show Cause Notice has further clarified that for the purposes of compliance with the stipulations in Para no. (III) of SEBI Circular dated March 22, 2018, Noticee has maintained a record of the orders placed by the concerned clients physically by obtaining signed trade order sheets and copies of these documents had been enclosed with the Reply.

37.8. It is submitted that the intent of SEBI Circular dated March 22, 2018, is to ensure maintenance of record of an order being placed for the purpose of reconciliation with execution of the trade in the event of a dispute. It is submitted that time is of importance while placing trades and in the given instances, the order was placed and confirmed on the mobile of the dealer. Therefore, to meet its compliance obligation, record of the order placement was obtained by the AP physically which has been duly signed by the respective clients. It is necessary to also clarify that all post trade confirmations in respect of the relevant trades had been provided to the respective clients inter – alia by way of SMS and Email along with digitally contract notes and margin statements and till date, no dispute has been raised with the AP or Noticee in respect of such trades.

38. I note that the, it was alleged that during inspection *inter alia* it was observed that AP did not maintain the compliant register; and did not display the mandatory disclosures and Notice Board at its office. Whereas the Noticee in its AP report for inspection dated March 22, 2023 submitted incorrect report. In this regard, Noticee has contended that the mandated requirements were adhered by the AP, as

evident from the inspection report dated March 22, 2023 and April 29, 2024, which contains the photographs of the premises showcasing that mandatory details were displayed at the premises of the AP, and register was also maintained. Further, the Noticee has submitted that when the inspection team visited the premises, maybe due to exigent reasons, the displayed disclosures were taken down. Hence, Noticee has contended that Noticee has not submitted wrong information to SEBI in its report.

39. I note that the inspection team observed that the AP started disclosing the mandatory disclosures and notices in front of the inspection team and they did not find any repair or anything that could be considered as an exigent reasons to not to display the mandatory disclosures and Notices, or for not keeping complaint register. In view of the above, Noticee is in violation of Point No. (7)(c) of Annexure -1 of SEBI Circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009 read with Point No. (7) (a) of Annexure -1 of SEBI Circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009.

40. Further, the Noticee has submitted the inspection report dated March 22, 2023 which contains the photographs, wherein the mandatory notices and disclosures seems to be on display at AP premises. The Noticee has also submitted the photographs taken by it during inspection of the AP Premises on April 29, 2024, which showcase the mandatory displays and complaint register. In view of the above, there is insufficient evidence to showcase that the Noticee was aware of non-display of mandatory information by its AP and submitted the incorrect information. In view of the above, it is not established that the Noticee violated BSE Notice No: 20191018-43 dated October 18, 2019, BSE Notice No: 20211021-38 dated October 21, 2021.

41. Further it was alleged that the trade records for order placement were not maintained for the orders placed by dealer Manoj Rana of Jatin Bhanushali. In this

regard Noticee has submitted that in case of client, Jatin Dhanji Bhanushali (VBJ005) and Meghna Jatin Bhanushali (VBM007), that Meghna Jatin Bhanushali is spouse of Mr. Jatin Bansal Bhanushali and he is placing the order on their behalf.

42. In this regard, I note that though the AP was himself authorised to place orders in the account of his wife Meghna Jatin Bhanushali, it is not clear if the trades were placed by AP through call to its dealer, or the AP himself placed the trades in his spouse's accounts. If the order was placed through dealer through telephone call it was mandatory for the AP to record the evidence of the same as per extant instructions, and in case the AP placed trade order himself, then he should have kept the physically signed records by himself for placement of trades. It is noted that there is no such evidence placed on records.

43. Further, in respect of 12 other trades (for client codes JDB017, JDB050 & JDB060), wherein the AP did not provide the order placement evidence during the inspection, it is noted that for these clients, AP was not authorised to trade. Further, for these 12 trades the trade authorization sheets placed on records are not serial numbered and lack the Slip Numbers. These trade sheets seems to be filled by one person and then signed by respective clients. The aforesaid discrepancies, and non-submission of these sheets at the time of inspection as evidence for placement of trade, constrains undersigned to not accept these as evidence for placement of trade order by the clients with the AP.

44. Noticee has contended that in case of JDB017, JDB050 & JDB060 all trades were executed on request of clients on mobile & immediately confirmed, further post trading intimation, statements and contract notes, are sent to clients. Further clients are also provided with online access of back office / online trading app for verification of transaction executed in account. Further, no complaints were received from above mentioned clients till date.

45. In this regard, I note that the intention of Para no. (III) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, Regulation 3.2.1 of NSEIL CM regulation, Regulation 3.4.1 of NSEIL FO Regulation, is to prevent the unauthorised trading by brokers, by mandating that all brokers shall execute trades of clients only after keeping evidence (as specified) of the client placing such order, which the broker shall produce in case the client dispute the trades executed. The measures outlined by the Noticee are different and in addition to the mandatory pre-trade order placement evidence recording. Hence, the contention of the Noticee is not acceptable.

46. In view of the above, it is established that the AP did not keep evidence of placement of trade orders for its clients, hence Noticee violated Para no. (III) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, Regulation 3.2.1 of NSEIL CM regulation, Regulation 3.4.1 of NSEIL FO Regulations.

Issue II. Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act?

47. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee has violated the regulatory provisions as given below:

47.1. Point No. (7)(c) of Annexure -1 of SEBI Circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009 read with Point No. (7) (a) of Annexure -1 of SEBI Circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009.

47.2. Para no. (III) of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, Regulation 3.2.1 of NSEIL CM regulation, Regulation 3.4.1 of NSEIL FO Regulations.

48. I find from the observations made in the inspection report, material available on record and the discussion above in the order that the AP of the Noticee has failed to maintain/keep evidence for placement of client order placement, display of mandatory information, Notices and maintenance of complaint register. Further as stock broker is responsible for all acts of omission and commission of his authorised person, the Noticee is found to be responsible for the above non-compliances and make the Noticee liable for monetary penalty under the provisions of section 15HB of the SEBI Act.

49. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) which inter-alia has 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...".*

50. The aforesaid violations, makes the Noticee liable for penalty under Section 15 HB of the SEBI Act. The contents of the said provisions of law is reproduced herein below:

<u>Relevant provisions of SEBI Act:</u>

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.*

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules?

51. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, which reads as under: -

SEBI Act

Factors to be taken into account while adjudging quantum of penalty
15J *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*

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

[Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

52. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance to the provisions of the SEBI Regulations and Exchange Circulars is not available. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violations by the Noticee. With respect to the repetitive nature of the default, I do not find anything on record.

53. However, I note that corrective action has also been taken by the Noticee post inspection and also no complaints against Noticee has been brought on record etc., which is considered as mitigating factors while deciding the quantum of penalty.

ORDER

54. Considering all the facts and circumstances of the case including the submissions of the Noticee and exercising the powers conferred upon me under section 15-I of SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby impose the following monetary penalty under section 15HB of the SEBI Act on the Noticee:

Sr. No.	Name of the Noticee	Penalty Provisions	Amount of penalty (in ₹)
1	Nirmal Bang Securities Private Limited	Section 15HB of SEBI Act	₹ 2,00,000/- (Rupees Two Lakhs Only)

In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

55. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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

56. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, 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.

57. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai | **SHASHI KUMAR VALSAKUMAR**

Date: September 30, 2024 | **ADJUDICATING OFFICER**