BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/DS/2023-24/30022]

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

IN THE MATTER OF

Evermore Share Broking Private Limited
(Erstwhile Evermore Commodity Brokers Private Limited)
PAN No.: AAACE0199D
SEBI Regn No.: INZ000022431

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted inspection of M/s Evermore Share Broking Private Limited (formerly known as Evermore Commodity Brokers Private Limited (hereinafter referred to as "**Noticee/ Evermore / the Company**") with respect to its stock broking activities from August 24, 2022 to September 05, 2022. The period covered in inspection was from April 2021 to July 2022 (hereinafter referred to as "**inspection period**" / "**IP**"). Noticee is registered as stock broker with SEBI registration no. INZ000022431.

2. The findings/ observations made during the course of inspection were communicated to the Noticee by SEBI vide letter dated October 07, 2022. After examining the reply submitted by the Noticee vide letter dated October 19, 2022,

it has been alleged that the Noticee violated various provisions of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SC(R) Act, 1956**"), SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as "**Stock Brokers Regulations, 1992**") and applicable SEBI Circulars. The extracts of violations alleged to have been committed by the Noticee and the corresponding provisions of SC(R) Act, 1956, Stock Brokers Regulations, 1992 and SEBI Circulars are given in the tabulation below:

Table 1

Sr. No.	Alleged Violations	Regulatory Provisions
1	Misuse of Clients' funds	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 to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
2	Non-settlement of inactive clients' funds	Clause 5.4 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 read with Clause 8.1.1 of Annexure to SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Clause 12. e of Annexure-A to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009
3	Incorrect reporting of peak margin	Clause 4.1.2, 4.1.5 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated,

Sr. No.	Alleged Violations	Regulatory Provisions
		November 19, 2019 read with Clause 2 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2020/146 dated July 31, 2020
4	Discrepancies in stock reconciliation	Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008, read with Exchange Circular NSE/INSP/38743 dated August 30, 2018 and NSE/INSP/39393 dated November 13, 2018
5	Client funding	Clause 2.6 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017
6	Disclosure of investor complaints on stock broker website	Clause 3 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021 dated December 02, 2021
7	Discrepancy in net worth data submitted to the Exchange	Clause A(5) of Schedule II read with Regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992 and Annexure A to NSE Circular NSE/COMP/48895 dated July 10, 2021
8	Discrepancies in reporting of enhanced supervision data on weekly basis	Clause 3.2 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with NSE circular NSE/INSP/33276 dated September 27, 2016, NSE/ INSP/31912 dated March 07, 2016

Sr. No.	Alleged Violations	Regulatory Provisions
9	Discrepancies in reporting of enhanced supervision data on monthly basis	Clause 7 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
10	Discrepancies in risk based supervision data reporting	Clause 6.1.1.e of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, NSE circular NSE/ INSP/28925 dated February 20, 2015 read with NSE/INSP/ 50229 dated November 08, 2021
11	Engaging as Principal in business other than that of securities involving personal financial liability	Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957
12	Mismatch in ledger balance vis-à-vis daily margin statements sent to the clients	Clause 2.4 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 read with NSE Circular NSE/INSP/36786 dated January 19, 2018
13	Excess Payout made to clients	Clause A(5) of Schedule II read with Regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992, regulation 6.1.6.2 of NSE Regulations (F&O segment) and Regulation 6.1.5 (c) of Part A of NSE Capital Market Regulations
14	Cyber security and cyber resilience	SEBI circular SEBI/HO/MIRSD/CIR/P/2018/147 dated December 03, 2018 read with SEBI circular no.

Sr. No.	Alleged Violations	Regulatory Provisions
		CIR/MRD/ DMS/34/2013 dated November 6, 2013

3. SEBI initiated adjudication proceedings against the Noticee under section 23D and section 23H of SC(R) Act, 1956, and section 15HB of SEBI Act, 1992 for the alleged violations of the relevant provisions as stated above.

APPOINTMENT OF ADJUDICATING OFFICER

4. Ms. Soma Majumdar, General Manager, was appointed as the Adjudicating Officer **(AO)** vide Order dated September 05, 2023 under Section 15-I of the SEBI Act, 1992, section 23-I of the SC(R) Act, 1956, Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "**SCRA Adjudication Rules**"), to inquire into and adjudge under section 23D and section 23H of SC(R) Act, 1956 and section 15HB of SEBI Act, 1992, the violations of aforesaid provisions alleged to have been committed by the Noticee. Pursuant to her transfer, the undersigned was appointed as AO vide Order dated December 07, 2023.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

5. Show Cause Notice No. SEBI/EAD/SM/AS/45020/1/2023 dated November 08, 2023 (hereinafter referred to as **"SCN"**) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992, section 23-I of the SC(R) Act, 1956, rule 4 of SEBI Adjudication Rules and rule 4 of SCRA Adjudication Rules, to show cause as to why an inquiry should not be held against it and why penalty, if any, under

section 23D and section 23H of SC(R) Act, 1956 and section 15HB of SEBI Act, 1992 be not imposed on the Noticee.

6. The SCN was duly served on the Noticee through SPAD and digitally signed e-mail. Vide email dated December 26, 2023, the Noticee was advised to submit response by December 29, 2023. Vide email dated December 30, 2023, the Noticee requested for one week's time for submitting reply to the SCN, which was acceded to. Vide letter dated January 03, 2024, hearing notice was issued to Noticee to provide opportunity of personal hearing in the interest of natural justice. The Noticee was advised to appear before the undersigned on January 12, 2024. Vide letter dated January 04, 2024, Noticee submitted its reply to the SCN.

7. The submissions made by the Noticee are as summarized below:

   <u>Misuse of Clients' funds</u>

   7.1. As Per Annexure A of Exchange Circular No. NSE/INSP/35412 dated July 20, 2017, specifically point No. 3, the aggregate value of collateral, including Cash & Cash Equivalents (FD, BG, etc.), deposited with all clearing members must be considered. Noticee's understanding of point No. 3 in the Enhanced Supervision Report is that it has to report clear balances for clients and not for clearing members. Consequently, it has reported the balance with the clearing member as per its account book along with the clear balance of its clients. Cheques issued to the clearing member were duly recorded in its books on the issuance date. However, the clearing member reported its balances as per their book, crediting Noticee's account when the cheque cleared. It is important to note that if SEBI or the Exchange intended to emphasize the importance of reporting clear balances for clearing members, they should have provided similar clarity as they did for clients' balances in point No. 3. No circular, FAQ, or information has been provided on this matter till date. Based on calculations, *supported with available documentation, and considering the clearing member balance as reported by them, the variable "G" was positive for one day and negative for nine days during all trading days from July 05, 2021, to July 16, 2021, ranging from Rs. 3.28 Crore to Rs. 11.13 Crore. Similarly, "H" was positive for one day and negative for nine days, corresponding to the negative trend of "G." There has been no withdrawal or shortage of funds. Funds have been consistently available in the system. The reported shortage arose due to an interpretation difference in calculating the clearing member balance. The funds were temporarily placed with an NBFC to optimize interest costs on excess cash. After the SCN issued by NSE on July 19, 2021, regarding the discrepancy between balances reported by the clearing member and balances in Noticee's books, it brought this matter to the attention of its senior management. Following consultation with the exchange, it started to report the clearing member's clear balances as reported by the clearing member from July 30, 2021. Since then, no differences, shortages, or violations of Principals I, II, and III have been identified. During the audit period, SEBI examined a total of 19 sample dates along with additional 17 sample dates verified by NSE. No violations of any principles were found on these dates excluding July 2021. Furthermore, NSE has already imposed penalties for the same period and observations, and the Noticee requested these actions to be taken into consideration.*

7.2. With respect to the value of 'I' and 'J' being positive in one out of 29 instances, the Noticee submitted that the said observations are not correct due to the following reasons:

7.2.1. As per provisions of Annexure to Enhanced Supervision Circular, 'A' refers to the aggregate of funds available in all Client Bank accounts including the settlement Account, maintained by the stock broker across stock exchanges. In this regard, two FDRs of ₹1 crore each were created *out of client funds and an overdraft facility was availed in the client's bank account only. Balance as Fixed deposit or balance in the client bank account are same. Consequently, the balance of FDRs pertains to client funds and should be accounted for in the cumulative funds available in all Client Bank Accounts & value of FDRs, including the settlement account, maintained by the stock broker across stock exchanges.*

7.2.2. No clarification or circular to date has been issued by BSE / ICCL regarding the MLN Deposit, therefore it has considered this deposit while calculating the deposit with the clearing corporation in the form of cash and cash equivalents.

7.2.3. The violation of value of 'I' will reduce to ₹0.97 crore, after considering the FDR balances of Rs.2.00 Crore which are made from the client's funds and balances of TGF Funds and MLN. The Violation of positive value of 'I' of 0.97 Crore was unintentional and this was due to the securities being withdrawn from the clearing member on 23rd August 2021 after the market hour at 18:48 amounting to ₹ 1.72 Cr. for borrowing from Aditya Birla Finance Limited. Unfortunately, the funds were received on the next day 24th August 2021. The shortage was recouped in the very next day 24th August 2021, by transferring the amount of Rs. 1.75 Crore.

7.2.4. If the value of FDRs is considered, the value of 'J' will become negative for the one sample day on which the value of 'J' is alleged to be positive.

<u>Non-settlement of inactive clients' funds</u>

7.3. Noticee is not maintaining a separate bank account to park the funds of inactive clients because it does not have any inactive clients. There has been a delay of 03 – 36 days in settlement of clients' funds of the clients who had credit balances and had not traded in previous 30 days since their last transaction. All these clients' balances were settled every quarter.

Clients No Settled	No of clients	Amount Unsettled	Member Remarks
As on 30 June 2021	13	3960.65	Circular no applicable
As on 31 July 2021	19	523005.57	Circular no applicable
As on 31 Aug 2021	28	1594152.02	Delay ranges to 10 days
As on 30 Sept 2021	1	37549.68	Delay ranges to 03 days
As on 31 Oct 2021	1	28050.34	Delay ranges to 36 days
As on 30 Nov 2021	12	889903.77	Delay ranges to 06 days
As on 31 Dec 2021	1	1897106.56	No delay due to the 1 & 2 Jan being holidays and the client traded on 04th Jan 2022
As of 31 Jan 2022	37	93251.11	Out of 37, Only 7 clients have not settled (annexure attached)
As of 31 May 2022	6	54983.74	Delay ranges 06 to 15 days

7.4. *There was a delay in 55 cases ranging from 3 to 36 days and amounting to ₹ 26.88 Lakh. Noticee's back-office software was not updated to create alerts for payment to these clients. It was making payments on a manual search basis only and missed some clients monthly.*

7.5. *However, there was no non-compliance detected in the quarterly settlement payment for any client.*

Incorrect reporting of peak margin

7.6. *Based on the NSE circular no NSE/INSP/46485 dt 27th November 2020 FAQ 01, Noticee's risk policy updated and stipulates a 20% upfront margin requirement for any positions in the capital market. However, the risk policy was not updated for the derivatives segment. Accordingly, Noticee has considered the full 100% value of the EPI of securities as per its risk policy, amounting to Rs. 1,731,406 towards the payment of the Peak margin. Consequently, it has reported the available margin based on this calculation. However, if it calculates only 80% of the EPI of securities, it has collected the margin short by Rs. 219175/- against the peak margin of 4.22 Cr.*

7.7. Regarding client 1G9, an inadvertent mistake trade occurred on December 20, 2021, executed by Noticee's dealer. This trade was rectified on the same day upon realization by its dealer, with an offsetting trade at the same price. No clients will pay any margin funds for any wrong trade by the dealer of the broker. Moreover, the client has stopped trading since 28th July 2021. On the day of the trade, the Noticee verbally discussed with the client for this wrong trade. As there is no price difference in the buy and sell price, the client agreed. A written confirmation from client is attached in support of its submissions.

<u>Discrepancies in stock reconciliation</u>

7.8. Based on the circular, the Noticee was reporting the shares which are transferred to the clearing member for the early pay-in. In this regard, NSE penalized the Noticee on September 29, 2022, for reporting excess balances of securities. Based on this order, the Noticee stopped reporting the shares which are transferred to the clearing member for the early pay-in of shares.

7.9. Thus, Noticee shall not be held responsible for not reporting the shares transferred to the clearing members for EPI, due to which excess quantity has been observed in the back office and demat statements by the inspection team.

<u>Client Funding</u>

7.10. This incident happened with only one client. An error in the risk management system allowed the trading software to execute trades for that specific client despite them having a debit balance. The client IP3 was updated as "1P3" in the risk management system as the Noticee has all client UCC numbers starting with 1. However, this particular client UCC code was opened as IP3. The Noticee has now addressed and rectified these bugs upon discovering them

Disclosure of investor complaints on stock broker website

7.11. The Noticee uploads complaint details as follows:

7.11.1. Complain received from Various parties

7.11.2. Monthly disposal of complaints

7.11.3. Trend of annual disposal of complaints

7.12. At the time of submitting this reply, all details are updated till November 2023. The web links have been provided for reference. However, there are no complaints registered with the Noticee by any clients to date.

Discrepancy in net worth data submitted to the Exchange

7.13. NSE Circular NSE/COMP/48895 dated July 10, 2021, regarding Doubtful Debts and Advances does not provide any clarity with respect to deducting deposits intended for business purposes or whether to consider only the deposit with an exchange or clearing corporation.

7.14. Noticee has made following deposits for business purposes - Electricity Deposit: Rs. 24,500/- (Adani Electricity); Rent Deposit: Rs. 175,500/-(GNFC Ltd); Lease line Deposit: Rs. 200,000/- (HCL Comnet Ltd); Total: Rs. 400,000/-

7.15. These deposits play a crucial role in the seamless functioning of the company and are integral to its operations and none of the above clauses provided in the said circular are applicable in this case.

7.16. Additionally, as a precautionary measure, the Noticee has conservatively deducted amounts from debtors outstanding for more than 30 days instead of 90 days as bad and doubtful, resulting in an excess deduction of Rs. 16,066.20 compared to NSE's calculation which is allowed as per this circular. Further, the Noticee's Net worth certificate was certified by its Statutory Auditors as well as our Internal Auditor during Internal Audit. Thus, no violation has been committed by the Noticee.

<u>Discrepancies in reporting of enhanced supervision data on weekly basis</u>

7.17. *In adherence to the Annexure A of Exchange Circular No. NSE/INSP/35412 dated July 20, 2017, Noticee has reported the balance with the clearing member under its bank book. Noticee's reporting is not aligned with the clear balance requirements specified for clients' balances. Noticee has have issued cheques to the clearing, and these transactions were duly recorded in its books on the date of issuance. The clearing member, in turn, has reported Noticee's balances based on their book and credits Noticee's account once the cheques are cleared by the bank. Further, no clarity has been provided by SEBI or the Exchanges as to whether only clear balances are supposed to be considered in case of clearing members. Uncleared cheques received from clients was deducted from the total credit balances of clients. Due to this balance for credit and debit clients was under-reported.*

7.18. *Without any clarification and circular inspection team did not consider the balance available under the OLD TGF funds and MLN deposit with the BSE Exchange.*

7.19. *Further Inspection team wrongly calculated the securities valuation with the clearing corporation*

7.20. *Noticee has accepted that it has over-reported the margin used for positions of Credit Balance clients for 30th July 2021, 17th March 2022, and 25th March 2022 and under-reported for 29th July 2022 due to wrong calculations for available securities of clients across different trading segments.*

7.21. *Noticee has under-reported the value of our securities deposited with Clearing Member to the extent of Rs. 10.39 Lakhs for 29th July 2022 due to a mistake in calculation. Uncleared cheques received from clients was deducted from the total credit balances of clients. Due to this balance for credit and debit clients was under-reported for 29th July 2022.*

7.22. Variances in trial balance as of July 09, 2021 vis-à-vis balances as per client ledger are a result of entries being inadvertently made on a later date as per the log maintained by back office software.

Date	AC Code	AC Description	Balance as per Trial Balance (Rs.)	Balance as per client ledger (Rs.)	Difference (Rs.)	Remarks
09-07-2021	1A37	Ankit Nawal Kishore Agarwal HUF	1,74,166.99	1,74,270.29	-103.3	The client was entitled to a Brokerage Rebate of Rs. 5393.00. However, due to a Calculation error, the brokerage credited to the client was Rs. 5289.70 on July 9, 2021. The entry was corrected on July 15, 2021, but there was an inadvertent rectification of the original entry dated July 9, 2021.
09-07-2021	1M22	Madhvi Jain	5564.67	5624.67	-60.00	During the reconciliation process for dividends received on behalf of our clients, an amount of Rs. 60 for 1M22 was recorded in the clients' ledger on July 19, 2021, with a value date of July 3, 2021.
09-07-2021	1N296	Navneet Baid	120181.86	120153.01	28.85	During the GST return process, it was discovered that the system failed to automatically apply GST to the brokerage and transactions for this client. Subsequently, the entry was manually inputted on July 23, 2021, with a value date of June 25, 2021, to rectify the oversight.

Discrepancies in reporting of enhanced supervision data on monthly basis

7.23. During the financial year closing ended on 31st March 2022, the last day of trading for each client was not updated in the new database for the financial year 2022-203. Consequently, clients with a zero balance and who had not traded in the financial year 2022-23 were not reflected in the reports as the back office system lacked the last trading date information. This issue was addressed on August 25, 2022, and rectified immediately. Importantly, the absence of material impact is noted, as nil balances of affected parties did not result in any significant consequences.

Discrepancies in risk based supervision data reporting

7.24. There exists a debit balance from 152 clients, totalling Rs. 355,333/-. Out of these 152 clients, only 08 have securities pledged or re-pledged with us. As per NSE circular NSE/INSP/50229 dated 08 November 2021, the total available collaterals from all debit balance clients on the last day of the assessment period should be free and unencumbered. Thus, Noticee has reported the value of the collateral based on this understanding. Therefore, no violation has been committed by the Noticee.

<u>Engaging as Principal in business other than that of securities involving personal financial liability</u>

7.25. Noticee has borrowed/repaid and advanced its surplus funds to NBFC namely Vayoo Nandan Finance Company Limited ("Vayoo Nandan" a RBI Registered NBFC certificated bearing No 14.00598 dt 31st March 1998) aggregating to 127.06 cr. and repaid to Rs. 127.05 cr. on 428 times from 01st April 2021 to 30th July 2022. The highest balance outstanding was only Rs. 10.05 Crore on 16th April 2021. These funds were utilized for and sourced from the securities business. There is no restriction on the call money loans taken by the Noticee. It is only one NBFC company from whom the Noticee has borrowed the funds as call money loan and advanced fund out of its surplus funds (over and above the required net worth) which was duly repaid as well when calling back. Any prudent person would invest the surplus fund in a way that would entitle him to higher returns or serve a business purpose. Noticee has paid 1,616,879/- as interest to M/s Vayoo Nandan Finance Company Private Limited which means borrowed more funds during the inspection period.

7.26. Noticee has not engaged in the business of lending and borrowing from different entities. This activity was only to reduce interest cost on its surplus fund which was kept for the working capital requirement of securities business-

like payment of margin or shortage of pay-in of the fund by clients. No disproportionate gain or unfair advantage is taken with this activity. It was similar to investment in liquid funds with a bank or mutual fund purely to earn interest on available surplus funds.

7.27. Further, there is no trading During the Financial year 2021-22 by the Vayoo Nandan Finance Company Private Limited and in the Financial year 2022-23 up to July, there are only 3 days of trading for buying of shares. The Noticee has closed the account of Vayoo Nandan dated 14th October 2022. Proof of account closure has been attached for reference.

7.28. A plain reading of the Rule 8(3)(f) of SCR Rules and Rule 5(b) of the Chapter II of the Rules of the Exchange would indicate that a trading member cannot engage as a principal or employee in any business involving any personal financial liability other than that of securities. SEBI's circular dated May 7, 1997 clarified that borrowing and lending funds by a trading member, in connection with or incidental to or consequential upon the securities business would not disqualify a trading member under Rule 8(3)(f) of the SCR Rules.

7.29. Noticee also relied on the judgement of Hon'ble SAT dt 29th November 2023 Appeal No 461 of 2022 between Magnum Equity Broking Limited vs. National Stock Exchange of India Limited

<u>Mismatch in ledger balance vis-à-vis daily margin statements sent to the clients</u>

7.30. One client was erroneously reported with a short value of Rs. 5,000/- in the daily margin statement. Although the Noticee received cheques of Rs. 200,000/- and Rs. 195,000/- on July 13, 2021, they were mistakenly posted as Rs. 2 lakh each. Subsequently, the Noticee corrected the entry for the cheque received from Rs. 200,000/- to Rs. 195,000/- on July 15, 2021, after bank *reconciliation. However, due to the necessity of issuing the daily margin statement on the same day, it was sent based on the initial, incorrect entries.*

7.31. A discrepancy in the daily margin statement was identified for one client, indicating an excess value of Rs. 4,49,94,811.27. This error originated from an incorrect import of balances trading segment-wise for the client at the commencement of the new financial year on April 1, 2022. The Noticee inadvertently carried a credit of Rs. 4,49,94,811.27 in the capital market segment and a debit in the non-capital segment. As the Daily Margin Statement informed segment-wise balance, the Noticee had correctly displayed the credit balance in the capital market but the debit balance in the Non-capital segment was not displayed. Due to this, the Excess balance of Rs. 4.50 cr. was displayed in Daily Margin Statement. The accurate balance for this client was Rs. 1,04,25,221.71. However, the Noticee has reported the correct balances in the client-level cash and cash equivalent balances to exchange and also informed the client through weekly financial ledger.

7.32. Excess Reported in daily margin statement - 9 clients; Value – Rs. 9,44,16,936.59/-: - The Noticee collected all types of Margins i.e. VAT+ELM + Additional + Minimum Margin and accordingly, it reports to clients through daily margin statements. Further, as per circular NSE/INSP/53820 dt 23rd September 2022 FAQ no 5(III) " Apart from 50% cash margin mentioned in point ii above, member may also retain 225% of EOD margin (which includes additional 125% margin) reduced by 50% cash margin and the value of securities (after applying appropriate haircut) accepted as collateral from the clients by way of 'margin pledge' created in the Depository system for the purpose of margin and value of commodities (after applying appropriate haircut). The margin liability shall include the end of the day margin requirement in all the segments across exchanges excluding the margin on consolidated crystallized obligation/ MTM. The margin liability may also include *the margin collected by the Member from their clients as per the risk management policy and informed to the clients."*

7.33. Accordingly the Noticee has collected all types of margin VAT+ ELM + Additional+ Minimum imposed by NSE from clients and reported to clients. As per the Inspection Team, the Noticee has to report only the EOD Total margin to be collected (Minimum margin + Additional Margin + MTM). As per Noticee's understanding, it has to inform the total margin (VAT+ ELM + Additional+ Minimum imposed by NSE reported to clients).

<u>Excess Payout made to clients</u>

7.34. Clause A(5) of Schedule II read with Regulation 9(f) of SEBI (Stock Brokers) Regulation,1992, Regulation 6.1.6.2 of NSE Regulations (F&O) Segment) and Regulation 6.1.5 (c) of Part A of NSE Capital Market Regulations may be referred. These clauses are not clarifying and doesn't constrain the earlier payout of funds to the clients after the successful EPI of shares to the clearing corporation and before the settlement of the transaction.

<u>Cyber security and cyber resilience</u>

7.35. Noticee has submitted Incident Response Plan for the pandemic. Additionally, it is in discussions with its vendors regarding the STQC certification.

8. The Noticee appeared for the scheduled hearing through its authorized representative (**AR**). The AR reiterated submission made vide letter dated January 04, 2024. The AR was asked to submit following documents.

8.1. Statement that the amount of ₹10.56 lakh which was funded to the client IP3 has been recovered and is not outstanding as on date.

8.2. CS certificate stating that the requirements of disclosures with respect to investor complaints as per SEBI Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2021/676 dated December 02, 2021, have been complied with, since October 07, 2022, i.e. date of communication of the inspection finding by SEBI to the Noticee.

9. The AR requested time till January 18, 2024 to submit these documents and to make additional submissions. The request was acceded to. The Noticee made additional submissions vide mail dated January 18, 2024.

10. The additional submissions made by the Noticee are as summarized below:

10.1. *With respect to the allegations of negative value of 'G' and positive values of 'I' and 'J', Noticee submitted the following.*

Sr No	Date of FDR	Amount	Sources of Fund for Making FDR	Utilization of FDR
1.	26-06-2020	10,000,000/-	Fund received from Client in the client a/c dt 26-06-20 and transfer to settlement A/c and further transfer to Own A/c and their FDR has been created.	The FDR is lien mark in the **Client A/C** for availing overdraft facility for the client. Copy of Bank Statement and confirmation of Email from Bank.
2.	04-08-2020	10,000,000/-	Fund received from Clearing member against payout of clients in the settlement A/c and further transfer to Own A/c and their FDR has been created.	The FDR is lien mark in the **Client A/C** for availing overdraft facility for the client. Copy of Bank Statement and confirmation of Email from Bank.

10.2. Since the initiation of enhanced supervision reporting, the BSE Team conducted inspections on at least three occasions before the Joint Inspection with SEBI. However, during these inspections, there were no observations related to MLN and OLD TGF balance. Additionally, BSE issued Notice 20220624-45 dated June 24, 2023, and 20231107-1 dated November 7, 2023. Prior to the issuance of these notices, there was a lack of clarity on this matter.

Consequently, the Noticee has factored in this MLN and OLD TGF deposit when calculating the deposit with the clearing corporation, treating it as cash and cash equivalents. However later on OLD TGF balance has been considered by BSE/ICCL.

10.3. Client funding - The debit balance of Client was recovered and the client is still active in the trading. Ledger of the client is attached for your reference.

10.4. Disclosure of investor complaints on stock broker website - Compliance officer Certificate attached

10.5. With respect to discrepancies noticed in cyber security and system audit, the Noticee submitted the following.

10.5.1. Company policy for implemented measures to prevent access or copying or transmission of data / information held in contractual or fiduciary capacity has been submitted by the Noticee.

10.5.2. With reference to security for customer facing applications such as IBT, such type of software are covered strong encryption by SSL and others. Further, Noticee is using secured FTP created by owned or purchase from vendors (Licensed).

10.5.3. For in-house software testing, certificates have been attached and for outside vendors, the reply received from the vendor regarding STQC Certification has been enclosed. Policy for remote access has also been submitted by the Noticee.

10.5.4. When the Noticee needs the service from Service provider, it provides the access through its machine and a dedicated person for monitoring.

CONSIDERATION OF ISSUES AND FINDINGS

11. Considering the allegations made out in the SCN and the submissions made by the Noticee, I find that following issues require consideration in the present case:

    ISSUE I - Whether the Noticee is in violation of the provisions of SC(R) Act, 1956, SEBI Brokers Regulations, 1992 and applicable SEBI Circulars, as given in Table 1 above?

    ISSUE II - Do the violations, if any, attract penalty under section 23D and section 23H of SC(R) Act, 1956 and section 15HB of the SEBI Act, 1992?

    ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992 and section 23J of SC(R) Act, 1956?

12. The said provisions under which violations have been alleged against the Noticee are reproduced below –

    SC(R) Act, 1956

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

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

    SEBI (Stock Brokers) Regulations, 1992

    Conditions of registration.

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

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

SCHEDULE II - CODE OF CONDUCT FOR STOCK BROKERS

*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 Boardand the Stock Exchange from time to time as may be applicable to him.

Securities Contracts (Regulation) Rules, 1957.

Qualifications for membership of a recognised stock exchange.

8. The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:

(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if—

(f) he engages either as principal or employee in any business other than that of securities [or commodity derivatives] except as a broker or agent not involving any personal financial liability, provided that—

(i) the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,

(ii) in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,

(iii) nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items (a) to (n)15 of the proviso to sub-rule (4).

SEBI Circular Ref.: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 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.

SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008

2. In continuation of earlier circulars and in order to reiterate the need for brokers to maintain proper records of client collateral and to prevent misuse of client collateral, it is advised that :-
2.3 The records should be periodically reconciled with the actual collateral deposited with the broker.

2.4 Brokers should issue a daily statement of collateral utilization to clients which shall include, inter-alia, details of collateral deposited, collateral utilised and collateral status (available balance / due from client) with break up in terms of cash, Fixed Deposit Receipts (FDRs), Bank Guarantee and securities.

<u>Annexure-A to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.</u>

Running Account Authorization

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.

<u>SEBI circular no. CIR/MRD/ DMS/34/2013 dated November 6, 2013.</u>

https://www.sebi.gov.in/legal/circulars/nov-2013/system-audit-of-stock-brokers-trading-members_25675.html

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

2. Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges

2.1 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.

2.2 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 by the 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 debit clients 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 IDI, 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 IDI, 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: - IDI

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 misutilisation 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. Standard Operating Procedures for Stock Brokers/Depository Participants - Actions to be contemplated by Stock Exchanges/Depositories for any event based discrepancies

6.1.1. Monitoring criteria for Stock Brokers

e. Failure to submit data for the half yearly Risk Based Supervision within the time specified by Stock Exchange.

7. Uploading clients' fund balance and securities balance by the Stock Brokers on Stock Exchange system

7.1 The Stock Exchanges shall put in place a mechanism and ensure that stock brokers upload the following data on a monthly basis for every client onto each Stock Exchange system where the broker is a member

7.1.1. Exchange-wise end of day fund balance as per the client ledger, consolidated across all segments and also net funds payable or receivable by the broker to/from the client across all Exchanges

7.1.2. End of day securities balances (as on last trading day of the month) consolidated ISIN wise (i.e., total number of ISINs and number of securities across all ISINs)

7.1.3. For every client, number of securities pledged, if any, and the funds raised from the pledging of such securities

7.1.4. The data at Para 7.1.1, 7.1.2 and 7.1.3 pertains to the last trading day of the month. The stock broker shall submit the aforesaid data within seven days of the last trading day of the month.

7.2. Each Stock Exchange shall in turn forward this information to clients via Email and/or SMS on the email IDs and mobile numbers uploaded by the stock broker to the Exchange for their clients.

7.3. The above provisions shall be applicable three months from the date of this circular.

8.1. In partial modification of circular on running account settlement, the stock broker shall ensure that;

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.

<u>SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017</u>

2. SEBI has received further representations from the market participants regarding certain provisions of the aforesaid circular. Based on the discussions with different stakeholders, following clarifications are made:

d. Clause 2.6 stands modified as, "Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except, in accordance with the margin trading facility *provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time." This clause would be effective from August 1, 2017.*

SEBI circular SEBI/HO/MIRSD/CIR/P/2018/147 dated December 03, 2018
https://www.sebi.gov.in/legal/circulars/dec-2018/cyber-security-and-cyber-resilience-framework-for-stock-brokers-depository-participants_41215.html

SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated, November 19, 2019
4. In cash segment,the VaRmarginis collectedby Clearing Corporation (CC)upfrontfromtrading member/clearing member by adjusting against theavailableliquid assets of TM/CMat the time of trade. However, the quantum, form and mode of collection of the marginfrom the client isleft to the discretion of TM/CM.In order to align and streamlinethe risk management framework of both cash and derivatives segments,with respect to collection of margins from the clients and reporting of short-collection/non-collection of margins, following guidelines are issued:
4.1 Collection of margins from the clients by TM/CM in cash segment:
4.1.2 Henceforth, like in derivatives segment, the TMs/CMs in cash segment are also required to mandatorily collect upfront VaR margins and ELM from their clients. The TMs/CMs will have time till 'T+2' working days to collect margins (except VaR margins and ELM) from their clients. (The clients must ensure that the VaR margins and ELM are paid in advance of trade and other margins are paid as soon as margin calls are made by the Stock Exchanges/TMs/CMs. The period of T+2 days has been allowed to TMs/CMs to collect margin from clients taking into account the practical difficulties often faced by them only for the purpose of levy of penalty and it should not be construed that clients have been allowed 2 days to pay margin due from them.)

4.1.5 As like in derivatives segments, the TMs/CMs shall report to the Stock Exchange onT+5 day the actual short-collection/ non-collection of all margins from clients.

<u>SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/ 2020/146 dated July 31, 2020.</u>

In view of the representations received from investors, TMs/ CMs, stock broker associations, in this regard, following has been decided:

2.1.If TM / CM collects minimum 20% upfront margin in lieu of VaR and ELM from the client, then penalty for short-collection / non-collection of margin shall not be applicable. However, it is reiterated that Clearing Corporation shall continue to collect the upfront margin from the TM / CM based on VaR and ELM.

2.2.The penalty provision for short-collection / non-collection of upfront margin in cash segment shall be implemented with effect from September 01, 2020.

<u>SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021</u>

5. In partial modification of the aforementioned circulars dated December 03, 2009 and September 26, 2016 on settlement of running account, following has been decided:

5.4 For the clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction, the credit balance shall be returned to the client by TM, within next three working days irrespective of the date when the running account was previously settled.

<u>SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/676 dated December 02, 2021</u>

3) Additionally, in order to bring about transparency in the Investor Grievance Redressal Mechanism, it has been decided that all the Stock Brokers shall disclose on their respective websites, the data on complaints received against them or

against issues dealt by them and redressal thereof, latest by 7th of succeeding month, as per the format enclosed at Annexure 'B' to this circular.
The web-link is provided as below.
https://investor.sebi.gov.in/pdf/investor-charter/Recognized%20Stock%20Brokers.pdf

Annexure A to NSE Circular NSE/COMP/48895 dated July 10, 2021
https://nsearchives.nseindia.com/content/circulars/COMP48895.pdf

NSE/ INSP/31912 dated March 07, 2016
https://archives.nseindia.com/content/circulars/INSP31912.pdf

NSE Regulations (F&O segment)
6. RECORDS, ANNUAL ACCOUNTS & AUDIT
6.1.6.2.The transfer from constituent's account to Trading Member's account shall be allowed under circumstances enumerated below :
(i) ***Obligation to pay money into "Constituents account":*** *Every Trading Member who holds or receives money on account of a constituent 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 "Constituents" shall appear (hereinafter referred to as "Constituents Account"). Trading Member may keep one consolidated constituents account for all the constituents or accounts in the name of each constituent, as he thinks fit; provided that when a Trading Member receives a cheque or draft representing in part money belonging to the constituent and in part money due to the Trading Member, he shall pay the whole of such cheque or draft into the constituents account and effect subsequent transfer as laid down below in para (iii.b).*
(ii) Money to be paid into "constituents account": No money shall be paid into constituents account other than - a. money held or received on account of

constituents; b. such moneys belonging to the Trading Member as may be necessary for the purpose of opening or maintaining the account; c. money for replacement of any sum which may by mistake or accident have been drawn from the account; d. a cheque or draft received by the Trading Member representing in part money belonging to the constituent and in part money due to the Trading Member.

(iii) Money to be withdrawn from "constituents account": No money shall be drawn from constituents account other than –

a. money properly required for payment to or on behalf of constituents for or towards payment of a debt due to the Member from constituents or money drawn on constituent's authority, or money in respect of which there is a liability of constituents to the Trading 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 constituent;

b. such money belonging to the Trading Member as may have been paid into the constituent account under para (ii.b) and (ii.d) above;

c. money which may by mistake or accident have been paid into such account.

(iv) Right to lien, set-off etc., not affected: Nothing in this para 1 shall deprive a Trading Member of any recourse or right, whether by way of lien, set- off, counter-claim charge(s) or otherwise against moneys standing to the credit of constituents account.

(v)

(a) The Trading Members shall keep the dematerialised securities of Constituents in a separate beneficiary account distinct from the National Stock Exchange of India Limited Regulations (F&O Segment) 54 beneficiary account maintained for holding their own dematerialised securities. No delivery towards the own transactions of the Trading Members shall be allowed to be made from the account meant for Constituents. For this purpose, every Trading Member is required to

open a beneficiary account in the name of the Trading Member exclusively for the securities of the Constituents (hereinafter, to be referred to as "Constituents beneficiary account"). A Trading Member may keep one consolidated Constituents' beneficiary account for all its Constituents or different accounts for each of its Constituents as it may deem fit.

(b) Securities to be delivered into Constituents beneficiary account: No security shall be delivered into Constituents beneficiary account, other than

A. securities held or received on account of Constituents towards margin or as security deposit;

B. securities for replacement of those which may by mistake or accident have been drawn from the account.

(c) Securities to be withdrawn from Constituents beneficiary account: No security shall be drawn from Constituents beneficiary account other thanA. when they are properly required, for delivery to or on behalf of Constituents; for or towards meeting the Constituents' margin or pay- in obligations; B. what are drawn under Constituents' authority or in respect of which there is a liability of Constituents to the Trading Member; C. securities which by mistake or accident have been deposited into the account; Provided further that the securities so drawn shall not in any case exceed the securities so held for the time being for the respective Constituent.

Part A of NSE Capital Market Regulations

6.1.5 (c) The transfer from client's account to Trading Member's account shall be allowed under circumstances enumerated below :

(i) Obligation to pay money into "Clients account" : Every Trading Member 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"). Trading Member 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 Trading Member receives a cheque or draft representing in part money belonging to the client and in part money due to the Trading 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 (iii.B).

(ii) Moneys to be paid into "clients account": No money shall be paid into clients account other than

A. money held or received on account of clients;

B. such moneys belonging to the Trading Member as may be necessary for the purpose of opening or maintaining the account;

C. money for replacement of any sum which may by mistake or accident have been drawn from the account;

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

(iii) Moneys to be withdrawn from "clients account": No money shall be drawn from clients account other than - A. money properly required for payment to or on behalf of clients 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 Trading 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; B. such money belonging to the Trading Member as may have been paid into the client account under para (ii.B) and (ii.D) above. money which may by mistake or accident have been paid into such account. National Stock Exchange of India Limited Regulations – Part A (Capital Market Segment)

(iv) Right to lien, set-off etc., not affected: Nothing in this para 1 shall deprive a Trading Member of any recourse or right, whether by way of lien, set-off, counter-

claim charge(s) or otherwise against moneys standing to the credit of clients account.

13. I will now proceed with my findings in each of the alleged violations against the Noticee in the SCN dated November 08, 2023

14. **Misuse of clients' funds** –

14.1. Following was observed with respect to misuse of clients' funds:

14.1.1. G was negative for 10 days (all trading days from July 05, 2021 to July 16, 2021), in the range of ₹ 2.03 crore to ₹ 11.34 crore. The details are provided in the table - 2 below.

Table - 2

Sr. No.	*Date*	**Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges**	**Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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**	**Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)**	**Total 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)**	**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.**
		A	***B***	***C***	***D***	***G***
1	05-Jul-21	6,89,767.86	21,05,02,783.25	23,15,68,000.51	81,21,019.04	-2,03,75,449.40
2	06-Jul-21	2,21,295.76	12,89,70,602.37	21,12,95,789.58	6,56,56,628.16	-8,21,03,891.45

Sr. No.	Date	Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) across all 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	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)	Total 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)	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.
		A	*B*	*C*	*D*	*G*
3	07-Jul-21	16,86,401.41	12,34,87,223.41	21,91,77,575.34	3,51,33,699.20	-9,40,03,950.52
4	08-Jul-21	2,85,868.64	17,76,07,938.91	23,09,79,552.60	32,53,334.01	-5,30,85,745.05
5	09-Jul-21	9,38,394.67	12,59,69,934.91	21,55,27,394.98	6,62,01,297.89	-8,86,19,065.40
6	12-Jul-21	4,31,778.26	11,53,76,667.82	22,29,11,823.10	6,93,78,098.87	-10,71,03,377.02
7	13-Jul-21	17,79,005.04	15,04,29,258.82	25,08,91,513.62	1,94,35,813.58	-9,86,83,249.76
8	14-Jul-21	4,08,59,345.15	11,04,44,449.82	25,77,07,757.46	1,98,30,127.56	-10,64,03,962.49
9	15-Jul-21	8,79,271.31	11,05,86,966.32	22,30,18,782.28	3,48,05,982.82	-11,15,52,544.65
10	16-Jul-21	22,06,425.02	10,72,14,942.53	22,28,86,474.54	4,44,99,296.73	-11,34,65,106.99

14.1.2. Further, on October 20, 2021, G was negative by ₹1,34,97,793.29/- and amount of funds of one client used for another client to the extent of ₹71,45,326.95/- and fund used for own purpose to the extent of ₹ 63,52,466.34 /-. The details are provided in the table – 3 below.

Table 2

Sr.No	Particulars	Amt (In ₹)
1	Total of day end balance in all Client Bank Accounts (In ₹)	6,24,507.45
2	Collateral deposited with exchanges in form of Cash and Cash Equivalents (In ₹)	3,66,00,000.00
3	Collateral deposited with clearing member in form of Cash and Cash Equivalents (In ₹)	22,08,75,489.05
4	Total Credit Balance of all clients (In ₹)	27,15,97,789.79
5	Total debit balance of all clients (In ₹)	71,45,326.95
	DIFFERENCE (G)	**-1,34,97,793.29**

14.1.3. On August 23, 2021, value of I (i.e. Funds of clients used for Margin obligation of proprietary trading) was positive to the extent of ₹ 5,99,57,200.46 and value of J (i.e. Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading) was positive to the extent of ₹ 70,91,967.80. The details are provided in the table - 4 below.

Table 3

Sr.No	Particulars	Amt (In ₹)
1	Total of day end balance in all Client Bank Accounts (In ₹)	96,65,767.31
2	Collateral deposited with exchanges in form of Cash and Cash Equivalents (In ₹)	3,70,99,547.00
3	Collateral deposited with clearing member in form of Cash and Cash Equivalents (In ₹)	20,66,45,067.85
4	Total Credit Balance of all clients (In ₹)	24,24,57,649.38
5	Total debit balance of all clients (In ₹)	78,37,540.08
	DIFFERENCE (G)	**1,09,52,732.78**

Sr.No	Particulars	Amt (In ₹)
	Amount of funds of one client used for another client	**N.A**
	Amount fund used for own purpose	**N.A**
6	Value of Own Securities Deposited as Collateral with Clearing corporation (In ₹)	-
7	Value of Own Securities Deposited as Collateral with Clearing Member (In ₹)	5,34,18,830.96
8	Value of Non funded portion of the Bank Guarantee (In ₹)	8,18,49,547.00
9	Proprietary margin Obligation (In ₹)	20,61,78,311.20
	Funds of clients used for Margin obligation of proprietary trading	**5,99,57,200.46**
10	Margin utilized for positions of Credit Balance Clients (In ₹)	7,57,90,089.14
11	Free/unblocked Collateral deposited with Clearing corporation (In ₹)	1,59,79,886.00
12	Free/unblocked Collateral deposited with Clearing Member (In ₹)	13,39,29,939.13
	Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading	**70,91,967.80**

14.2. As per Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, a broker shall ensure that the proprietary and client transactions are kept separate. The broker shall also ensure that moneys are withdrawn from the client accounts only for payments due to the broker from the clients, money belonging to the broker, moneys which have been paid by mistake into such accounts. With respect to the value of G, the broker shall ensure that the total available funds are always equal to or greater than the clients' funds as per ledger balance.

14.3. With regard to the observation of <u>G negative for 10 days (all trading days from July 05, 2021 to July 16, 2021</u>), Noticee has submitted that it has considered the uncleared balances of cheques deposited with the clearing member in line with Point No. 3 of Annexure A of Exchange Circular No. NSE/INSP/35412 dated July 20, 2017 as per which aggregate value of collateral deposited with clearing member in form of cash and cash equivalents is to be considered. Noticee has further submitted that it is nowhere mentioned that only clear balances are to be considered in case of cheques deposited with clearing members.

14.4. I note that Noticee has misinterpreted the aforesaid circular dated July 20, 2017. Point 3 of the Circular specifies that for calculating 'Collateral deposited with clearing member in form of Cash and Cash Equivalents', aggregate value of collateral deposited with clearing member in form of cash and cash equivalents (FD, BG, etc.) and in case of BG, only funded portion of the BG shall be considered. However, there is no mention regarding uncleared cheques in point no. 3. Therefore, Noticee's contention that it has considered uncleared cheques in line with circular dated July 20, 2017 is not acceptable. As observed from the table - 2 above, G is negative to the extent of Rs. 11,34,65,106.99.

14.5. Noticee has submitted that after considering the uncleared cheques deposited with the clearing member, G would be positive for one day and negative for 9 days between July 05, 2021 to July 16, 2021. I note that even when Noticee has considered the uncleared balances, instances of negative value of G still persist.

14.6. With regard to <u>G negative on October 20, 2021</u>, Noticee has submitted that two FDRs created out of clients' funds of ₹ 1 crore each were not considered for total EOD balance in client bank accounts. Also, old TGF deposit of ₹10 lakh and MLN Deposit of ₹ 24.50 lakh have not been considered as collateral deposited with exchanges in form of cash and cash equivalents.

14.7. I note that the FDRs have been created out of the bank account, which is named as ‘Evermore Stock Brokers private Limited – Own Account’. Thus, both the FDRs have not been created out of clients’ bank accounts. As per the extant circular, only FDRs created out of client account or settlement account are allowed to be considered for calculating EOD balance in client bank accounts.

14.8. Noticee has further submitted that though the bank accounts are not client accounts, the funds originally pertain to clients’ funds, as the funds were actually transferred from the clients’ accounts to own account and then FDRs were created on June 26, 2020 and August 04, 2020. From the bank account statements submitted by the Noticee, I note that the Noticee has demonstrated that the funds pertain to the clients. However, 2016 SEBI Circular on enhanced supervision has clearly specified the calculation of value of G and therefore, even though the source of the FDRs is clients’ funds, I find that the same cannot be considered for the calculation of the values of G, I and J, as it will lead to non-adherence to the provisions of SEBI Circular dated September 26, 2016. Further, no explanation is given by the Noticee for transferring of clients’ funds to own account. Thus, Noticee’s submission is not acceptable.

14.9. Noticee’s submissions regarding consideration of old TGF balances of ₹ 10 lakh is acceptable. With regard to its submission regarding consideration of MLN deposit of ₹34.50 lakh, I note that as per the BSE, MLN (Minimum Liquid Networth) deposit are not to be considered as collateral deposited with the exchanges. Therefore, I find that the value of G was negative and I and J were positive on October 20, 2021.

14.10. With regard to the observation of <u>value of I and J being positive on August 23, 2021</u>, the Noticee has submitted that two FDRs created out of clients' funds of ₹ 1 crore each were not considered for total EOD balance in client bank accounts. Also, old TGF deposit of ₹10 lakh and MLN Deposit of ₹ 24.50 lakh have not been considered as collateral deposited with exchanges in form of cash and cash equivalents. I note that this contention is not acceptable for the reasons already discussed above.

14.11. Noticee has further submitted that after considering the aforesaid balances, the value of I will reduce to ₹0.97 crore, which occurred because securities worth ₹1.72 crore were withdrawn from the clearing member for borrowing funds from an NBFC. However, the funds were received on the subsequent day, i.e. August 24, 2021, and for this reason, I is not positive on August 24, 2021 as per the Noticee's calculations. I note that Noticee has accepted that even after considering the FDRs, old TGF deposit and MLN deposit, value of I remains negative on August 23, 2021. The reasons provided by the Noticee for the differential ₹0.97 crore is not acceptable, as it was Noticee's responsibility to ensure that adequate funds were available in the system.

14.12. Findings in the foregoing paragraphs are summarized as under.

14.12.1. Noticee has transferred funds out of Client account to make FDRs from own account.

14.12.2. Value of G was negative in 11 out of 29 sample instances. The average misutilised amount was ₹8.07 crore and the amount of misutilisation ranged from ₹1.25 crore to ₹ 11.34 crore. Value of I and J was positive in one out of 29 instances, which indicates that clients' funds were misutilised towards margin obligations of proprietary trading of the Noticee and debit balance clients respectively.

14.13. Thus, I find that the Noticee has violated the provisions of 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 to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/ 2016/95 dated September 26, 2016.

15. **Non-settlement of inactive clients' funds –**

15.1. During inspection, it was observed that the Noticee had not maintained separate bank account to park the funds of inactive clients. It was also observed that the Noticee had not settled the funds of inactive clients in 87 instances spanning over 8 months (value ₹ 29.29 lakh).

15.2. As per Clause 5.4 of SEBI circular SEBI/HO/MIRSD/DOP/P/ CIR/2021/577 dated June 16, 2021 read with Clause 8.1.1 of Annexure to SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Clause 12. e of Annexure-A to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009, a broker shall return the credit balance of its clients if the clients have not traded in the 30 calendar days since the last transaction such credit balances should be returned within next three working days irrespective of the date when the running account was previously settled.

15.3. Noticee has submitted that it does not have inactive clients and all the clients and their bank details are traceable. Thus, it does not require to maintain a separate bank account for parking inactive clients' funds. Noticee has submitted that in all the 87 instances observed during inspection, the balances were settled at the end of every quarter. The reason for delay was that the back-office software was not equipped to create alerts for payment to these clients, and due to this, the Noticee was manually searching such clients to settle their balances. This led to missing of some clients each month.

15.4. I note that the Noticee has accepted that due to its manual system of identifying clients who have not traded in 30 calendar days, it missed settlement in 87 instances observed during the inspection period. However, the explanation is not acceptable, as it was Noticee's responsibility to ensure that proper systems were in place to settle the balances of clients which had not traded in 30 calendar days after their last transaction through the Noticee. I also note that the balances of these clients were not transferred to a separate bank account.

15.5. Noticee has further submitted that out of 37 instances observed as on January 31, 2022, 31 instances pertain to the annual maintenance charges retained by the broker with respect to those clients. Further, one instance of non-settlement observed as on December 31, 2021 should not be considered as the client has traded on the third working day, i.e. January 4, 2022.

15.6. I note that Noticee's explanation with regard to 31 instances (₹ 10,711.25) where annual maintenance charges were retained is acceptable because brokers are allowed to debit charges from the clients' account for the fees and charges due to the broker. In the present matter, the Noticee had retained the clients' balance to the extent of the annual maintenance charge.

15.7. However, Noticee's submission for the one instance as on December 31, 2021 is not acceptable. The client 1S92 had last traded on November 03, 2021 and thereafter, it traded only on January 04, 2022. Thus, it did not trade for next 30 calendar days after the transaction on November 03, 2021. The Noticee should have settled the outstanding credit balance of ₹18.97 lakh pertaining to client 1S92 on or before December 8, 2021, i.e. within 3 working days after the completion of 30 calendar days since the last transaction which was made on November 03, 2021. However, it was observed that settlement of ₹ 18.97 lakh in favour of client 1S92 was not made by the Noticee.

15.8. It is observed that Noticee has submitted that it has upgraded its software and automated alerts are created for settlement of inactive clients' funds. However, by not settling credit balances of inactive clients in 56 instances Noticee has violated the provisions of Clause 5.4 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 read with Clause

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

16. **<u>Incorrect reporting of peak margin -</u>**

16.1. It was observed that the Noticee has incorrectly reported Peak Margin (2 clients; 2 instance) amounting to ₹ 11,11,086.71/-. The details are provided below for reference.

<u>Table 4</u>

Margin Date	**15/12/2021**	**20/12/2021**	
SEGMENT	**FO**	**CM**	
Client Code	**1R24**	**1G9**	**Total**
Total EOD Margin	3,78,45,795.88	-	
Total Peak Margin	4,22,65,456.68	8,91,911.02	
Collected Peak Margin	4,22,65,456.68	8,91,911.02	
Ledger Balance	4,06,61,156.19	-	
EPI of Securities	13,85,124.80	-	
Peak Ledger Balance (Funds + Collaterals)	4,20,46,280.99	-	
Wrong Reporting (In ₹)	**2,19,175.69**	**8,91,911.02**	**11,11,086.71**

16.2. As per the provisions of Clause 4.1.2, 4.1.5 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated, November 19, 2019 read with Clause 2 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/ 2020/146 dated July 31, 2020, brokers shall report peak margins to the stock exchanges.

16.3. From table – 5 above, it is observed that as on December 15, 2021, the Noticee has allegedly reported the peak margin of ₹ 4,22,65,456.68 instead of ₹ 4,20,46,280.99 (as per its peak ledger balance). In this regard, the Noticee has submitted that it has considered 100% of the early pay in (EPI) value of securities i.e. ₹ 17,13,406 for calculating the peak margin in derivatives segment, in accordance with NSE Circular NSE/INSP/46485 dated November

27, 2020. However, the SEBI inspection team has considered 80% of the EPI value of securities, i.e. ₹13,85,124.80.

16.4. In this regard, I note that as per Point 1 of Annexure A of NSE circular NSE/INSP/46485 dated November 27, 2020 read with SEBI circular SEBI/HO/MRD2/DCAP/CIR/P/ 2020/127 dated July 20, 2020, "*In respect of sale of shares by a client for which early pay-in (EPI) has been accepted by CC and credit entry is posted of the sale value of the shares in the ledger account of the client, EPI value may be considered as margin collected towards subsequent margin requirement of the client.*

However, the sale value of such securities (EPI value), as reduced by value of the 20% upfront Margin, shall be available as Margin for other positions across all the segments."

16.5. Therefore, the Noticee should have computed only 80% of the value of EPI securities, i.e. ₹13,85,124.80 instead of the 100% of the value of EPI securities, i.e. ₹ 17,13,406, which has actually been considered by the Noticee. Thus, Noticee's explanation of its different interpretation of the aforesaid provisions is not tenable.

16.6. With respect to the EPI margin reported on December 20, 2021 for client code 1G9, the Noticee has submitted that due to an inadvertent mistake, the dealer of the Noticee punched a trade in the client name of 1G9. This resulted in the difference of ₹8,91,911.02. However, the mistake was identified and rectified on the same day by reversing the trades immediately. For this trade, no margins were collected from the client 1G9. Hence, the same was not reported by the Noticee. The Noticee has also submitted a confirmation received from the client and further submitted that this incident took place on December 20, 2021, whereas the client had not traded through the Noticee since July 28, 2021.

16.7. The submissions of the Noticee in this regard is acceptable.

16.8. From the foregoing paragraphs, I find that there has been wrong reporting in one instance, amounting to ₹ 2,19,175.69, and thus the Noticee has violated the provisions of Clause 4.1.2, 4.1.5 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated, November 19, 2019 read with Clause 2 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/ 2020/146 dated July 31, 2020.

17. **<u>Discrepancies in stock reconciliation -</u>**

17.1. During inspection, reconciliation of back office holding of clients' securities with actual stocks lying in all client/ collateral / margin DP accounts was carried out to ensure that all clients' securities are there in DP accounts of trading member. It was observed that there is excess quantity as per back office holding in 19 ISIN resulting in mismatch of shares of value ₹ 77,05,175.65. Further, Verification of data uploaded by the Noticee with respect to Holding statement on a weekly basis with stocks lying in DP accounts was also carried out. It was observed that there is excess quantity as per DP holding (demat statements) in 19 ISIN resulting in mismatch of shares of value ₹ 77,05,175.65. The relevant details are provided below.

<u>Table 5</u>

Sr no.	ISIN	Quantity as per Weekly Holding Submission as on 30th July, 2022	Quantity as per Back Office Holding as on 30th July, 2022	Quantity as per Demat Account as on 30th July, 2022	Difference (Rs.)	Price as on 30th July, 2022 (Rs.)	Value as on 30th July, 2022 (Rs.)
1	INE699H01024	0	1000	1000	-1000	658.8	-6,58,800.00
2	INE947Q01028	0	2000	2000	-2000	522.7	-10,45,400.00

Sr no.	ISIN	Quantity as per Weekly Holding Submission as on 30th July, 2022	Quantity as per Back Office Holding as on 30th July, 2022	Quantity as per Demat Account as on 30th July, 2022	Difference (Rs.)	Price as on 30th July, 2022 (Rs.)	Value as on 30th July, 2022 (Rs.)
3	INE274V01019	0	5000	5000	-5000	707.25	- 35,36,250.00
4	INE274G01010	0	1000	1000	-1000	41.3	- 41,300.00
5	INE669E01016	0	1	1	-1	8.75	- 8.75
6	INE855B01025	0	200	200	-200	176.25	- 35,250.00
7	INE482A01020	0	50	50	-50	1260.55	- 63,027.50
8	INE075A01022	0	110	110	-110	423.7	- 46,607.00
9	INE148I01020	0	500	500	-500	110.05	- 55,025.00
10	INE558B01017	0	3000	3000	-3000	119.7	- 3,59,100.00
11	INE036A01016	0	4000	4000	-4000	117.1	- 4,68,400.00
12	INE493A01027	0	250	250	-250	221.3	- 55,325.00
13	IN9397D01014	0	1900	1900	-1900	293.35	- 5,57,365.00
14	INE476A01014	0	100	100	-100	222.3	- 22,230.00
15	INE876N01018	0	100	100	-100	116.15	- 11,615.00
16	INE022Q01020	0	4000	4000	-4000	159.6	- 6,38,400.00
17	INE075I01017	0	200	200	-200	269.5	- 53,900.00

Sr no.	ISIN	Quantity as per Weekly Holding Submission as on 30th July, 2022	Quantity as per Back Office Holding as on 30th July, 2022	Quantity as per Demat Account as on 30th July, 2022	Difference (Rs.)	Price as on 30th July, 2022 (Rs.)	Value as on 30th July, 2022 (Rs.)
18	INE337A01034	0	28	28	-28	703.3	-19,692.40
19	INE079A01024	0	100	100	-100	374.8	-37,480.00
							-77,05,175.65

17.2. From the table – 6 above, it is observed that there was under-reporting of securities in 19 ISINs amounting to ₹77,05,175.65 in its weekly reporting to the exchanges, as securities as per back office holdings and demat accounts are same and matching.

17.3. As per the provisions of Clause 2.3 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008, read with Exchange Circular NSE/INSP/38743 dated August 30, 2018 and NSE/INSP/39393 dated November 13, 2018, a broker shall preserve its Register of Securities, Holding Statement, Bank Book and Client Ledger in the prescribed format and the records should periodically be reconciled.

17.4. Noticee has submitted that vide NSE order dated September 20, 2022, it was penalised for reporting the EPI securities transferred to the clearing member. At the time of inspection, in February, 2021, NSE inspection team had also advised the Noticee to not report the EPI securities transferred to the clearing member Consequently, the Noticee stopped reporting the securities. Later, vide notice dated September 29, 2022,(inspection was carried out in December, 2021) the NSE penalised the Noticee for not reporting the shares transferred to the clearing member for early pay-in (EPI). Due to the contradictory views of the NSE, the Noticee chose not to report the securities, which has led to under-reporting of the securities to the stock exchanges. In its support, the Noticee has submitted the letter written to NSE with respect to the December, 2021 inspection, wherein the Noticee had informed the NSE regarding the conflicting interpretations. Noticee has further submitted a copy of the letter written to the NSE seeking refund/ reversal of one of the penalty amounts imposed on the Noticee.

17.5. Upon reading of the NSE order dated September 20, 2022, I note that NSE MCSGF Committee decided that *"Given the findings mentioned above, the Committee decided to levy a monetary penalty of Rs.1,00,000/- for the observed violation in terms of Exchange Circular No. NSE/INSP/48655 dated June 18, 2021."* The findings of the committee are provided below

"*a. Evermore attributed the observation/alleged violation to a wrong understanding of the circular, non-reporting of pledged securities of own account, reporting of securities transferred to Clearing Member pool account for early pay-in and securities reported under incorrect account.*

b. The Committee observes that as per Exchange Circular No. NSE/INSP/39855 dated January 3, 2019, the Trading Members are required to upload the holding statement data electronically for all calendar days of the reporting week on or before the next four trading days of the subsequent week through the Inspection module in the Member portal. The procedure for submission of the data is given in Annexure-1 to the said circular. Thus, Evermore violated the regulatory provision mentioned above by incorrectly reporting the data to the Exchange."

17.6. Upon reading of the NSE order dated September 29, 2022, I note that the Noticee has been penalised for non-reporting of shares transferred for early pay-in to Clearing Member for June 24, 2021.

17.7. I note that the Noticee has been penalised twice by the NSE, first for reporting the EPI securities transferred to the clearing member, and later for not reporting the EPI securities transferred to the clearing member. I accept the submission that due to the contrary advice and orders of NSE, the Noticee decided to not report the EPI securities transferred to the clearing member.

17.8. In view of the above, I find that the non-compliance cannot be attributed to the Noticee, as it was following the earlier observation and advise of the NSE with respect to not reporting the EPI securities transferred to the clearing member. Thus, the Noticee's submission is acceptable.

18. **Client Funding –**

18.1. It was observed that Noticee had funded total amount of Rs 10.56 lakh in four instances for 1 client out of sample 15 clients checked during the inspection. The details of the funding for the trades are provided below.

Table 6

Date of Bill	Transaction Remarks	Debit	Credit	Running Balance	Past 7th working Date	Ageing Balance (Unpaid Balance)	Client Code
03-Dec-21	Bill Posting for the SettNSEN2021228	52071.35	0	(5,73,509)	22 Nov 2021	-364086	IP3
07-Dec-21	Bill Posting for the SettNSEN2021230	730388.99	0	(12,97,079)	24 Nov 2021	-514562	IP3
08-Dec-21	Bill Posting for the SettBSEN2122172	146811.25	0	(14,42,423)	25 Nov 2021	-513123	IP3

Date of Bill	Transaction Remarks	Debit	Credit	Running Balance	Past 7th working Date	Ageing Balance (Unpaid Balance)	Client Code
08-Dec-21	Bill Posting for the SettBSET2122172	126472.56	0	(13,09,553)	25 Nov 2021	-253781	IP3

18.2. As per the provisions of Clause 2.6 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/64 dated June 22, 2017, a broker shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continue beyond the fifth trading day, as reckoned from the date of pay-in.

18.3. Noticee has submitted that the instance of client funding occurred inadvertently, as there was an error in the risk management system which allowed the trading software to execute trades for that specific client despite them having a debit balance. The client IP3 was updated as "1P3" in the risk management system as the Noticee has all client UCC numbers starting with 1. However, this particular client UCC code was open as IP3. Noticee has submitted that it has addressed and rectified these errors upon discovering them. Also, the debit balance of Client was recovered and the client is still active in the trading. Noticee has submitted a copy of the ledger of the client in support of its submissions.

18.4. I note that the Noticee has accepted the allegation of client funding and has also admitted the occurrence of the error due to shortcomings in its risk management system in the trading software. While the Noticee has addressed and rectified the bug, it is encumbent on the Noticee to ensure proper systems are in place. Therefore, I find that the Noticee has violated the provisions of Clause 2.6 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/ MIRSD2/CIR/P/2017/64 dated June 22, 2017.

19. **<u>Disclosure of investor complaints on stock broker website –</u>**

19.1. It was observed that while carrying out inspection on October 04, 2022, status of complaints of the month August 2022 was not available on the Noticee's website.

19.2. As per the provisions of SEBI circular SEBI/HO/ MIRSD/DOP/P/CIR/ 2021/676 dated December 02, 2021, *stock brokers shall disclose on their respective websites, the data on complaints received against them or against issues dealt by them and redressal thereof, latest by 7th of succeeding month.*

19.3. Noticee has submitted that it was displaying status of complaints in the website as required and provided link of the same. Noticee has further submitted that since the finding of the inspection team, the data has been regularly updated and further, there have not been any complaints received by the Noticee till date. Thus, no information has been hidden by the Noticee. Noticee has also submitted a CS certified letter which states that the Noticee has always complied with the applicable provisions with regard to disclosure of data of complaints on its website.

19.4. In the absence of the evidence showing non-updating of status of complaints of the month August 2022 on the Noticee's website and considering the submissions made by the Noticee, I find that the violation of provisions of SEBI circular SEBI/HO/ MIRSD/DOP/P/CIR/ 2021/676 dated December 02, 2021 against the Noticee does not stand established.

20. **<u>Discrepancy in net-worth data submitted to the Exchange –</u>**

20.1. It was observed that the computation of net-worth submitted to the Exchange was differing from the computation made by the inspection team. The Noticee had submitted its net worth as on March 31, 2022 as ₹ 12,36,98,826 whereas as per the calculation of the inspection team, the net-worth on the same date was ₹ 12,33,14,892. Thus, the net-worth was over-stated by the Noticee to the extent of ₹3,83,933.93. It was further observed that the overstatement has arisen due to the following reasons.

<u>Table 7</u>

Particulars	**Amount as per NSE (Rs.)**	**Amount as per Member (Rs.)**
Debtors outstanding for more than 90 days	4,10,731.80	4,26,798.00
Capital Advances	30,91,535.00	30,91,535.00
Security Deposits	4,00,000.00	0
Total	39,02,266.80	35,18,333.00

20.2. From table - 8, it is observed that the Noticee has conservatively considered debtors outstanding for more than 30 days as doubtful debts and has also considered security deposits made by it. However, the inspection team has not considered the value of security deposits for the computation of net-worth as on March 31, 2023.

20.3. It has been alleged that the Noticee has not complied with the computation of net-worth by the Noticee has not been made as per Dr L C Gupta method which specifies liquid net-worth of the trading member, and has allegedly not complied with the clarifications regarding net-worth computation provided under Annexure A to NSE Circular NSE/COMP/48895 dated July 10, 2021 and Clause A (5) of Schedule II read with Regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992.

20.4. The Noticee has submitted that the security deposits consists of electricity deposit of ₹24,500; rent deposit of ₹175,500; lease line deposit of ₹200,000, totalling to ₹4,00,000. It has further submitted that the deposits have been made to reputable companies, and is refundable. Thus, the same is to be considered for net-worth calculation. Noticee has further submitted that the computation of net-worth as on March 31, 2022, has also been certified by its statutory and internal auditors

20.5. I note that as per LC Gupta formula, debtors outstanding for more than 90 days should be considered as doubtful debts. However, the Noticee has considered debtors older than 30 days as doubtful. Thus, Noticee has followed an even more conservative approach, and this has led to under-statement of the net-worth by ₹ 16,066.20. In view of the same, there does not appear any violation so far as the calculation of debtors outstanding is concerned.

20.6. With respect to the security deposits which have been considered by the Noticee in calculation of net-worth, I note that the LC Gupta formula and the clarifications provided by the NSE Circular nowhere specify that the security deposits made for utilities like leased line, rent, electricity, etc. should not be considered for computation of net-worth. Noticee has also submitted a copy of its audited financial statements in which the deposits have been recognised at the same value. In the absence of any specific provision or principle which requires the security deposits to utility companies being disallowed for computation of net-worth, I am of the view that the allegation of violations of Annexure A to NSE Circular NSE/COMP/48895 dated July 10, 2021 and Clause A (5) of Schedule II read with Regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992 does not stand established.

21. **Discrepancies in reporting of enhanced supervision data on weekly basis –**

21.1. It was observed that Noticee had incorrectly reported the data towards weekly monitoring of client funds for the following dates: 09-Jul-2021, 30-Jul-2021, 17-Mar-2022, 25-Mar-2022 and 29-Jul-2022.

21.2. Further, upon verification of Top 10 highest Debtors / Creditors with Ledgers provided by Noticee, differences were observed in Balance as per Trial Balance provided by Noticee and Balance as per Client Ledger. The differences are as follows.

Table 8

Date	AC Code	Balance as per Trial Balance (₹)	Balance as per client ledger (₹)	Difference (₹)
09-07-2021	1A37	1,74,166.99	1,74,270.29	-103.3
09-07-2021	1M22	5564.67	5624.67	-60.00
09-07-2021	1N296	120181.86	120153.01	28.85
				-134.45

21.3. As per the provisions of Clause 3.2 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, stock brokers shall submit enhanced supervision data as on the last trading day of every week to the stock exchanges on or before the next trading day.

21.4. Incorrect reporting of data on July 09, 2021 - Differences observed in the details submitted by the Noticee vis-à-vis figures calculated by the inspection team are depicted in the following table – 10.

Table 9

Sr.No	Particulars	Inspection Team Calculation	Noticee's Submission	Difference
B	Collateral deposited with exchanges in form of Cash and Cash Equivalents (In ₹)	3,21,88,300.00	3,43,00,000.00	-21,11,700.00
B	Collateral deposited with clearing member in form of Cash and Cash Equivalents (In ₹)	9,37,81,634.91	19,37,81,635.00	-10,00,00,000.09
C	Total Credit Balance of all clients (In ₹)	21,55,27,363.34	21,24,54,724.00	30,72,639.34
D	Total debit balance of all clients (In ₹)	6,62,01,401.22	6,31,28,762.00	30,72,639.22
E	Value of **Own Securities** Deposited as Collateral with Clearing corporation (In ₹)	-	13,76,600.00	-13,76,600.00
E	Value of **Own Securities** Deposited as Collateral with Clearing Member (In ₹)	3,46,60,033.65	3,30,26,241.00	16,33,792.65
F	Value of Non funded portion of the Bank Guarantee (In ₹)	8,19,38,300.00	8,37,50,000.00	-18,11,700.00
MF	Free/unblocked Collateral deposited with Clearing corporation (In ₹)	2,42,59,486.00	2,45,59,486.00	-3,00,000.00
MF	Free/unblocked Collateral deposited with Clearing Member (In ₹)	12,42,64,429.97	22,42,64,430.00	-10,00,00,000.03

21.4.1. With respect to difference of ₹ 21,11,700 in Sr. No. B - Collateral deposited with exchanges in form of Cash and Cash Equivalents above, Noticee has submitted that the inspection team has not considered old TGF deposit amounting to ₹10 lakh and MLN deposit of the remaining amount. Noticee has also submitted the Holding statement dated July 09, 2021 in which old TGF balance of ₹ 10 lakh and amount of ₹ 50 lakh adjusted towards MLN / Additional Margin are shown as collateral in form of cash and cash equivalents. I accept Noticee's contention with respect to the old TGF balance of ₹ 10 lakh. However, as per the BSE, MLN (Minimum Liquid Networth) deposit are not to be considered as collateral deposited with the exchanges. Therefore, I find that the Noticee has overstated Collateral deposited with exchanges in form of Cash and Cash Equivalents by ₹11,11,700.

21.4.2. With respect to difference of ₹ 10 crore in Sr. No. B - Collateral deposited with clearing member in form of Cash and Cash Equivalents, Noticee has submitted that it had issued cheques of ₹ 10 crore to the clearing member, which were cleared subsequently and as the cheques were not cleared on July 09, 2021, inspection team has not considered this amount. I note that uncleared cheques lying with the clearing member cannot be considered as collateral as per Annexure A of the Exchange Circular No. NSE/INSP/35412 dated July 20, 2017. Thus, Noticee's contention is not acceptable. I find that the Noticee has overstated Collateral deposited with clearing member in form of Cash and Cash Equivalents by ₹10 crore.

21.4.3. With respect to the understatement of ₹ 30,72,639 in total debit balance as well as total credit balance of all clients, Noticee has submitted that it had received a cheque of this amount from a debit balance client, which it had inadvertently deducted from the total credit balance of all clients. This has resulted into understatement of both total debit balance and total credit balance of all clients. I note that Noticee has accepted the observation.

21.4.4. With respect to allegation of overstatement of Value of Own Securities Deposited as Collateral with Clearing corporation by ₹13,76,600, Noticee has submitted that the inspection team had not considered securities of this amount deposited with the ICCL. Noticee has also submitted a screenshot of the Client Security Report for the date of July 09, 2021, taken from the BSE portal, which shows that the Noticee had pledged 10000 own shares of AGL with the ICCL on July 09, 2021. After considering Noticee's submission, including the screenshot of the Client Security Report, I accept Noticee's contention

21.4.5. With respect to understatement of Value of Own Securities Deposited as Collateral with Clearing Member by ₹16,33,793, Noticee has submitted that it had considered the security value after deducting clearing member VaR, i.e. CVaR, from the demat holding report of the clearing member, whereas the inspection team has considered the security value after considering the VaR, which is stipulated by the clearing member. I note that as per NSE Circular No. NSE/INSP/35412 dated July 20, 2017, value of securities is to be taken after applying haircut stipulated by the Clearing Corporation, applied by the clearing member, i.e. VaR should have been considered. Thus, Noticee should have considered VaR instead of CVaR, which has led to understatement of Value of Own Securities Deposited as Collateral with Clearing Member by ₹16,33,793.

21.4.6. With respect to over-statement of Value of Non funded portion of the Bank Guarantee by 18,11,700, Noticee has submitted that the difference is due to the MLN deposit, which has not been considered by the inspection team. As per the BSE, MLN deposit is not be considered for calculation of non-funded portion of bank guarantee. Thus, I find that Noticee has incorrectly considered the value of MLN deposit to calculate value of non-funded portion of bank guarantee.

21.4.7. With respect to the difference of ₹3 lakh in MF - Free/unblocked Collateral deposited with Clearing corporation, Noticee has accepted that it had incorrectly reported the SLBM cash balance by ₹ 3 lakh.

21.4.8. With respect to the difference of ₹10 crore in MF - Free/unblocked Collateral deposited with Clearing Member, Noticee has submitted that uncleared cheques of the same amount were not considered by the inspection team. I note that uncleared balances with clearing member are not to be considered for free / unblocked collateral deposited with clearing member as per NSE Circular No. NSE/INSP/35412 dated July 20, 2017.

21.4.9. To summarise the aforesaid findings, I note that Noticee has reported incorrect figures for Sr No.s B, C, D, E, F and MF.

21.5. Incorrect reporting of data on July 30, 2021 - Differences observed in the details submitted by the Noticee vis-à-vis figures calculated by the inspection team are depicted in the table – 11 below.

Table 10

Sr.No	Particulars	Inspection Team Calculation	Member Submission	Difference
B	Collateral deposited with exchanges in form of Cash and Cash Equivalents (In Rs.)	4,71,93,920.50	49000000	-18,06,079.50
E	Value of **Own Securities** Deposited as Collateral with Clearing corporation (In Rs.)	0	1387841	-13,87,841.00
F	Value of Non funded portion of the Bank Guarantee (In Rs.)	8,19,43,920.50	83750000	-18,06,079.50
MC	Margin utilized for positions of Credit Balance Clients (In Rs.)	14,20,75,735.89	142081986	-6,250.11

21.5.1. With respect to difference of ₹ 18,06,080 in Sr. No. B - Collateral deposited with exchanges in form of Cash and Cash Equivalents above, Noticee has submitted that the inspection team has not considered old TGF deposit and MLN deposit. Noticee has also submitted the Total Liquid

Assets break-up report as on July 30, 2021 in which old TGF deposit of ₹ 10 lakh and MLN of ₹ 50 lakh is mentioned. I accept Noticee's contention with respect to the old TGF balance of ₹ 10 lakh, as BSE has also confirmed that old TGF balance is to be considered as collateral deposited with the exchanges. However, as per the BSE, MLN (Minimum Liquid Networth) deposit are not to be considered as collateral deposited with the exchanges. Therefore, I find that the Noticee has overstated Collateral deposited with exchanges in form of Cash and Cash Equivalents by ₹ 8,06,080.

21.5.2. With respect to allegation of overstatement of Value of Own Securities Deposited as Collateral with Clearing corporation by ₹13,87,841, Noticee has submitted that the inspection team had not considered securities of this amount deposited with the ICCL. Noticee has also submitted a screenshot of the Client Security Report for the date of July 30, 2021, taken from the BSE portal, which shows that the Noticee had pledged 10000 own shares of AGL with the ICCL on July 30, 2021. The same is also confirmed from the Total Liquid Assets Breakup Report for the date of July 30, 2021. After considering Noticee's submissions and supporting documents, I accept Noticee's contention.

21.5.3. With respect to over-statement of Value of Non funded portion of the Bank Guarantee by 18,06,080, Noticee has submitted that the difference is due to the MLN deposit, which has not been considered by the inspection team. As per the BSE, MLN deposit is not be considered for calculation of non-funded portion of bank guarantee. Thus, I find that Noticee has incorrectly considered the value of MLN deposit to calculate value of non-funded portion of bank guarantee.

21.5.4. With respect to over-statement of MC - Margin utilized for positions of Credit Balance Clients by ₹ 6,250, the Noticee has accepted the allegation and submitted that it had inadvertently calculated the margin utilised across segment instead of calculating the same segment-wise.

21.5.5. To summarise the aforesaid findings, I note that Noticee has reported incorrect figures for Sr No.s B, F and MC.

21.6. Incorrect reporting of data on March 17, 2022 - Differences observed in the details submitted by the Noticee vis-à-vis figures calculated by the inspection team are depicted in the table – 12 below.

Table 11

Sr.No	Particulars	Inspection Team Calculation	Member Submission	Difference
B	Collateral deposited with exchanges in form of Cash and Cash Equivalents (In Rs.)	2,95,50,000.00	3,11,50,000.00	-16,00,000.00
E	Value of **Own Securities** Deposited as Collateral with Clearing Member (In Rs.)	8,25,67,527.96	8,39,67,710.00	-14,00,182.04
F	Value of Non funded portion of the Bank Guarantee (In Rs.)	8,12,50,000.00	8,37,50,000.00	-25,00,000.00
MC	Margin utilized for positions of Credit Balance Clients (In Rs.)	3,34,46,713.13	4,44,37,827.00	-1,09,91,113.87

21.6.1. With respect to difference of ₹ 16 lakh in Sr. No. B - Collateral deposited with exchanges in form of Cash and Cash Equivalents above, Noticee has submitted that the inspection team has not considered old TGF deposit amounting to ₹10 lakh and MLN deposit. Noticee has also submitted the Total Liquid Assets break-up report as on March 17, 2022 in which old TGF deposit amounting to ₹10 lakh and MLN of ₹ 50 lakh are shown as collateral in the form of cash and cash equivalents. I accept Noticee's contention with respect to the old TGF balance of ₹ 10 lakh.

However, as per the BSE, MLN (Minimum Liquid Networth) deposit are not to be considered as collateral deposited with the exchanges. Therefore, I find that the Noticee has overstated Collateral deposited with exchanges in form of Cash and Cash Equivalents by ₹ 6 lakh.

21.6.2. With respect to allegation of overstatement of Value of Own Securities Deposited as Collateral with Clearing corporation by ₹14,00,182, Noticee has submitted that the inspection team had not considered securities of this amount deposited with the ICCL. Noticee has submitted copies of demat security statement generated through the clearing member for cash and F&O segment. However, the same cannot be considered as an evidence of own securities deposited as collateral with the clearing corporation, as Noticee has not submitted any document showing that the securities were deposited with ICCL. Thus, I find that Noticee has over-stated Value of Own Securities Deposited as Collateral with Clearing corporation

21.6.3. With respect to over-statement of Value of Non funded portion of the Bank Guarantee by ₹ 25 lakh, Noticee has submitted that the difference is due to the MLN deposit, which has not been considered by the inspection team. As per the BSE, MLN deposit is not be considered for calculation of non-funded portion of bank guarantee. Thus, I find that Noticee has incorrectly considered the value of MLN deposit to calculate value of non-funded portion of bank guarantee.

21.6.4. With respect to over-statement of MC - Margin utilized for positions of Credit Balance Clients by 1,09,91,114, the Noticee has accepted the allegation and submitted that it had inadvertently calculated the margin utilised across segment instead of calculating the same segment-wise. Noticee has further submitted that since September 30, 2022, they are calculating segment-wise margin utilised.

21.6.5. To summarise the aforesaid findings, I note that Noticee has reported incorrect figures for Sr. No.s B, E, F and MC.

21.7. Incorrect reporting of data on March 25, 2022 - Differences observed in the details submitted by the Noticee vis-à-vis figures calculated by the inspection team are depicted in the table - 13 below.

Table 12

Sr.No	Particulars	Inspection Team Calculation	Member Submission	Difference
B	Collateral deposited with exchanges in form of Cash and Cash Equivalents (In Rs.)	2,95,50,000.00	31150000	-16,00,000.00
F	Value of Non funded portion of the Bank Guarantee (In Rs.)	8,12,50,000.00	83750000	-25,00,000.00
MC	Margin utilized for positions of Credit Balance Clients (In Rs.)	2,00,86,480.73	36673420	-1,65,86,939.27

21.7.1. With respect to difference of ₹ 16 lakh in Sr. No. B - Collateral deposited with exchanges in form of Cash and Cash Equivalents above, Noticee has submitted that the inspection team has not considered old TGF deposit amounting to ₹10 lakh and MLN deposit. However, as per the BSE, MLN (Minimum Liquid Networth) deposit are not to be considered as collateral deposited with the exchanges. Therefore, I find that the Noticee has overstated Collateral deposited with exchanges in form of Cash and Cash Equivalents by ₹ 16 lakh.

21.7.2. With respect to over-statement of Value of Non funded portion of the Bank Guarantee by ₹ 25 lakh, Noticee has submitted that the difference is due to the MLN deposit, which has not been considered by the inspection team. I note that as per the BSE, MLN deposit cannot be considered for the calculation of non-funded portion of the bank guarantee. Thus, I find that Noticee has incorrectly considered the value of MLN deposit to calculate value of non-funded portion of bank guarantee.

21.7.3. With respect to over-statement of MC - Margin utilized for positions of Credit Balance Clients by ₹ 1,65,86,939, the Noticee has accepted the allegation and submitted that it had inadvertently calculated the margin utilised across segment instead of calculating the same segment-wise. Noticee has further submitted that since September 30, 2022, they are calculating segment-wise margin utilised.

21.7.4. To summarise the aforesaid findings, I note that Noticee has reported incorrect figures for Sr. No.s B, F and MC.

21.8. Incorrect reporting of data on July 29, 2022 - Differences observed in the details submitted by the Noticee vis-à-vis figures calculated by the inspection team are depicted in the table – 14 below.

Table 13

Sr.No	Particulars	Inspection Team Calculation	Member Submission	Difference
B	Collateral deposited with exchanges in form of Cash and Cash Equivalents (In Rs.)	1,16,00,000.00	12600000	-10,00,000.00
C	Total Credit Balance of all clients (In Rs.)	61,97,54,535.19	618915747	8,38,788.19
D	Total debit balance of all clients (In Rs.)	12,97,757.66	458969	8,38,788.66
E	Value of **Own Securities** Deposited as Collateral with Clearing Member (In Rs.)	8,45,31,477.25	83492807	10,38,670.25

Sr.No	Particulars	Inspection Team Calculation	Member Submission	Difference
F	Value of Non funded portion of the Bank Guarantee (In Rs.)	6,25,00,000.00	65000000	-25,00,000.00
MC	Margin utilized for positions of Credit Balance Clients (In Rs.)	55,21,735.88	3869313	16,52,422.88

21.8.1. With respect to difference of ₹ 10 lakh in Sr. No. B - Collateral deposited with exchanges in form of Cash and Cash Equivalents above, Noticee has submitted that the inspection team has not considered old TGF deposit and MLN deposit. Noticee has also submitted the Total Liquid Assets break-up report as on July 29, 2022 in which old TGF deposit of ₹ 10 lakh and MLN of ₹ 50 lakh is mentioned. I accept Noticee's contention only with respect to the old TGF balance of 10 lakh. Therefore, I find that the Noticee has overstated Collateral deposited with exchanges in form of Cash and Cash Equivalents by ₹ 6 lakh.

21.8.2. With respect to the understatement of ₹ 8,38,788 in total debit balance as well as total credit balance of all clients, Noticee has submitted that it had received cheque of this amount from debit balance client, which it had inadvertently deducted from the total credit balance of clients. This has resulted into understatement of both total debit balance and total credit balance of all clients. I note that Noticee has accepted the observation.

21.8.3. With respect to allegation of overstatement of Value of Own Securities Deposited as Collateral with Clearing corporation by ₹10,38,670, Noticee has accepted the allegation.

21.8.4. With respect to over-statement of Value of Non funded portion of the Bank Guarantee by ₹ 25 lakh, Noticee has submitted that the difference is due to the MLN deposit, which has not been considered by the inspection team. As stated above, MLN deposit is not be considered for calculation of non-funded portion of bank guarantee. Thus, I find that Noticee has incorrectly considered the value of MLN deposit to calculate value of non-funded portion of bank guarantee.

21.8.5. With respect to over-statement of MC - Margin utilized for positions of Credit Balance Clients by ₹ 16,52,423 , the Noticee has accepted the allegation and submitted that it had inadvertently calculated the margin utilised across segment instead of calculating the same segment-wise. Noticee has further submitted that since September 30, 2022, they are calculating segment-wise margin utilised.

21.8.6. To summarise the aforesaid findings, I note that Noticee has reported incorrect figures for Sr. No.s B, C, D, E, F and MC.

21.9. With respect to the observations of difference in balance as per client ledger vis-à-vis client trial balance, Noticee submitted the following.

21.9.1. Client Code – 1A37 – Due to calculation error, brokerage rebate credited to the client was short by ₹103.30. The inadvertent error occurred on July 09, 2021 and was corrected by the Noticee on July 15, 2021

21.9.2. Client Code – 1M22 – Dividend of ₹60 received on July 03, 2021, pertaining to the client was recorded in the client ledger with a delay, on July 19, 2021.

21.9.3. Client Code – 1N296 – GST amount of ₹28.85 was not applied to the brokerage and transactions made by the client on June 25, 2021. Subsequently, the entry was manually made on July 23, 2021.

21.10. From the aforesaid submissions, I note that the Noticee has accepted that there were differences in the client ledger vis-à-vis client trial balance.

21.11. In view of the above, the Noticee has violated the provisions of Clause 3.2 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with NSE Circular NSE/INSP/33276 dated September 27, 2016.

22. **Discrepancies in reporting of enhanced supervision data on monthly basis –**

22.1. It was observed in 88 instances Noticee had not reported the details of 87 clients having 'Nil' balance and not having traded during last 12 months from the reporting date, in cash and cash equivalent submission of the enhanced supervision data to the exchanges.

22.2. As per the provisions of Clause 7 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, a broker shall provide various data to the stock exchanges on monthly basis within 7 trading days of the last trading day of the month. The data to be provided includes exchange wise EOD balances as per the client ledger.

22.3. The Noticee has submitted that during the financial year closing ended on 31st March 2022, the last day of trading for each client was not updated in the new database for the financial year 2022-2023. Consequently, clients with a zero balance and who had not traded in the financial year 2022-23 were not reflected in the reports as the back office system lacked the last trading date information. This issue was addressed on August 25, 2022, and rectified immediately.

22.4. In view of the submissions made by the Noticee, I find that the Noticee has violated the provisions of provisions of Clause 7 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

23. **<u>Discrepancies in risk based supervision data reporting –</u>**

23.1. It was observed that the Noticee had not correctly reported the details of total available collaterals from all debit balance clients. The Noticee had reported the value of total available collaterals from all debit balance clients as ₹ 44,55,470.20, whereas, as per the inspection team, the reported value should have been ₹ 5,83,51,150. Thus, it was alleged that the Noticee has under-reported the value of collaterals from the debit balance clients by ₹5,38,95,679.80.

23.2. As per the provisions of Clause 6.1.1.e of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, NSE circular NSE/INSP/28925 dated February 20, 2015 read with NSE/INSP/50229 dated November 08, 2021, the brokers shall submit risk based supervision data in prescribed formats.

23.3. The Noticee has submitted that in accordance with circular NSE/INSP/50229 dated 08 November 2021, the total available collaterals from all debit balance clients on the last day of the assessment period, as stated in Point No 23, are considered. The circular reads: "*Total available collaterals (Free & un-encumbered) from debit balance clients (as considered for the above point) as of September 30, 2021*." In this regard, Noticee has interpreted that the securities which are repledged with the clearing member or clearing corporations cannot be considered as free and unencumbered, and thus, the same have not been reported by the Noticee. Noticee has further submitted that the NSE has not provided any clarification in this regard.

23.4. I note that Noticee has incorrectly interpreted that the securities re-pledged with the clearing member or clearing corporation cannot be considered as free or unencumbered. The said details which are required to be filled in the Annexure A of the NSE circular NSE/INSP/50229 dated 08 November 2021 are for the purpose of risk based supervision. The securities of the debit balance clients which are pledged with the Noticee cannot be distinguished with the securities pledged with clearing member or clearing corporations in terms of encumbrance. I also note that free and unencumbered collaterals include those securities which have not been pledged by the clients for financing from lenders or such other purposes. Thus, the securities pledged with the broker or repledged with the clearing member or clearing corporation cannot be considered as encumbered, and are to be considered for calculating the total available collaterals from all debit balance clients.

23.5. Thus, I find that the Noticee has violated the provisions of Clause 6.1.1.e of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, NSE circular NSE/INSP/28925 dated February 20, 2015 read with NSE/ INSP/50229 dated November 08, 2021 by not reporting correct figures for the risk based supervision data.

24. **<u>Engaging as Principal in business other than that of securities involving personal financial liability –</u>**

24.1. It was observed that Noticee had given unsecured loans & advances to Vayoo Nandan Finance Company Limited, which is a registered client of Noticee. Vayoo Nandan Finance Company Limited (hereinafter referred to as "Vayoo Nandan") had last traded through the Noticee during the inspection period in CM Segment on 23-May-2022. Vayoo Nandan is not involved in securities / commodities business. The summary of the transactions of the Noticee with Vayoo Nandan is provided below.

24.1.1. Opening balance as on April 01, 2021- NIL

24.1.2. Amount paid to Vayoo Nandan during inspection period – ₹ 127.03 crore

24.1.3. Amount received from Vayoo Nandan during inspection period - ₹126.9 crore.

24.1.4. Closing Balance as on 31st July 2022 – ₹ 105191.

24.1.5. Interest paid during inspection period - ₹ 16,16,879.00/-

24.1.6. TDS on interest paid during the inspection period- ₹ 1,61,688.00/-

24.2. As per the provisions of Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957, a stock broker shall not engage either as principal or employee in any business other than that of securities except as a broker or agent.

24.3. In this regard, the Noticee has submitted that Vayoo Nandan is a NBFC Company, and the Noticee has always been parking its surplus funds with the NBFC to earn interest, so that the interest cost on the funds borrowed for working capital requirements could be reduced. The Noticee has further submitted that on a net basis, and as also observed by the inspection team, the Noticee has paid interest of ₹ 1616879 to Vayoo Nandan, which indicates that the Noticee has borrowed more than what it has actually parked as surplus with Vayoo Nandan. Noticee has also submitted that Vayoo Nandan has not traded through the Noticee in the FY 2021-22 and has traded through the Noticee on only three days in FY 2022-23. The account of Vayoo Nandan has already been closed on October 14, 2022. In this regard, the account closure request form has been submitted by the Noticee with its reply to the SCN. Noticee has also relied on the judgement of Hon'ble SAT in the matter of Magnum Equity Broking Limited vs. National Stock Exchange of India Limited dated November 29, 2023 (Appeal No 461 of 2022), where it was inter-alia observed that *"10. In our view, investment of surplus funds, generated as a consequence of securities business, with an NBFC registered with RBI cannot lead to an inference that the Appellant is engaged as a principal in business other than that of securities involving personal financial liability. The Respondent Committee given a clear finding that the funds were advanced* *from the account of the Appellant therefore there is no dispute that the funds were their own moneys …. "*

24.4. I note that Noticee has parked its surplus funds and borrowed funds from Vayoo Nandan which is an NBFC. In view of the submissions made by the Noticee, there does not appear to be any violation as alleged.

25. **Mismatch in ledger balance vis-à-vis daily margin statements sent to the clients –**

25.1. Two instances of ledger balance mismatch in daily margin statements of two clients were observed during the inspection. The two instances are stated below.

25.1.1. Short reported in daily margin statement– 1 client; Value – ₹ 5,000.00

25.1.2. Excess reported in daily margin statement – 1 client; Value – ₹ 4,49,94,811.27

25.2. Further, nine instances of mismatch in Total Margin in Daily Margin Statements of 9 clients was also observed, wherein the value of excess reported in daily margin statement was ₹ 9,44,16,936.59. The details of aforesaid instances are provided in the table – 15 below.

Table 14

Day Date	Client Code	Client Name	As per Exchange working (Rs.)	As per Daily Margin Statement sent to clients (Rs.)	Difference (Rs.)	Remarks
13/07/2021	1R323	RAKESH VIDYADHAR CHAUDHARY	395875.06	390875.06	5000	Difference in ledger balance
05/05/2021	1A202	ANJU SOMANI	10425221.71	55420032.98	-4,49,94,811.3	Difference in ledger balance

Day Date	Client Code	Client Name	As per Exchange working (Rs.)	As per Daily Margin Statement sent to clients (Rs.)	Difference (Rs.)	Remarks
07/01/2022	1R229	RITU SURANA	172995	304551	-131556	Difference in Total Margin for all segments
13/07/2021	1R323	RAKESH VIDYADHAR CHAUDHARY	78100	468600	-390500	Difference in Total Margin for all segments
04/01/2022	1S92	SANJIV CHOUDHARY HUF .	93636	561816	-468180	Difference in Total Margin for all segments
26/11/2021	1S273	SUMATI PRADHAN	141490.95	181825.58	-40334.63	Difference in Total Margin for all segments
21/05/2021	1A37	ANKIT NAWALKISHORE AGARWAL HUF	448252.32	919884.14	-471631.82	Difference in Total Margin for all segments
18/10/2021	1I9	INTEX TECHNOLOGIES (INDIA) LIMITED	2354207.75	29019250.24	-26665042.5	Difference in Total Margin for all segments
27/12/2021	1R21	R.P REALTECH PRIVATE LTD.	1750590.74	13043190.42	-11292599.7	Difference in Total Margin for all segments
05/04/2021	1S221	SAGAR RAMDAS BOMBLE	3275	12223.25	-8948.25	Difference in Total Margin for all segments
21/10/2021	1Y4	YMS CAPITAL LLP .	0	54948143.72	-54948143.7	Difference in Total Margin for all segments
		Total			**-139406748**	

25.3. As per the provisions of Clause 2.4 of SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 17, 2008, brokers should issue a daily statement of collateral utilisation to clients, in the format prescribed in the Annexure A of the NSE Circular NSE/INSP/36786 dated January 19, 2018.

25.4. With respect to the difference of ₹ 5000 in the ledger balance of client 1R323, Noticee has submitted that the statement was sent on the T-day itself, i.e. July 13, 2021. The Noticee has received two cheques of ₹2,00,000 and ₹1,95,000, but it had wrongly posted the amount in the system for both the cheques as ₹2,00,000 each. Due to this, there was a difference in the daily margin statement on July 13, 2021. However, the mistake was realised on July 15, 2021 when the cheques were credited to the account and it was immediately rectified at that time. I note that the Noticee has accepted the error and rectified the same.

25.5. With respect to the difference of 4.50 crore in the ledger balance of client 1A202 in the daily margin statement dated May 05, 2021, Noticee has submitted that the difference occurred due to import of incorrect opening balance for the client at the beginning of the FY 2021-22 on April 01, 2021. The correct balance was ₹ 10425221.71, but the daily margin statement showed the ledger balance as ₹ 55420032.98. I note that the Noticee has accepted the error.

25.6. With respect to nine instances of mismatch in Total Margin in Daily Margin Statements of 9 clients, the Noticee has submitted that for the computation of total margin, the Noticee had considered all types of margin which are collected by it, i.e. VaR + ELM + Additional Margin + Minimum Margin, in accordance with the NSE Circular NSE/INSP/53820 dated September 23, 2022 FAQ No. 5(III) which states that *"Apart from 50% cash margin mentioned in point ii above, member may also retain 225% of EOD margin (which includes additional 125% margin) reduced by 50% cash margin and the value of securities (after applying appropriate haircut) accepted as collateral from the clients by way of 'margin pledge' created in the Depository system for the purpose of margin and value of commodities (after applying appropriate haircut). The margin liability shall include the end of the day margin* *requirement in all the segments across exchanges excluding the margin on consolidated crystallized obligation/ MTM. The margin liability may also include the margin collected by the Member from their clients as per the risk management policy and informed to the clients."* However, as per the inspection team, only Minimum Margin + Additional Margin + MTM is to be considered for calculating Total Margin.

25.7. I note that as per the NSE, for calculation of total margin required at the EOD, only Minimum Margin + Additional Margin + MTM is to be considered. However, the Noticee has also considered VaR and ELM for calculating the total margin, which is incorrect. Noticee has thus, violated the provisions of Clause 2.4 of SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008 read with Annexure A of the NSE Circular NSE/INSP/36786 dated January 19, 2018.

26. **<u>Excess Payout made to clients</u>**

26.1. It was observed that Noticee had made pay-out of funds to clients in excess of their balances. Upon further verification it was found that Noticee was doing early pay-out of funds to the clients against early pay-in of securities in 91 instances belonging to 61 clients in which total amount paid was ₹ 20,19,84,398.32/-.

26.2. As per the provisions of Regulation 6.1.6.2 of NSE Regulations (F&O segment) and Regulation 6.1.5 (c) of Part A of NSE Capital Market Regulations, no money shall be paid into clients account other than money held or received on account of clients ; such moneys belonging to the Trading Member as may be necessary for the purpose of opening or maintaining the account; money for replacement of any sum which may by mistake or accident have been drawn from the account ; a cheque or draft received by the Trading

Member representing in part money belonging to the client and in part money due to the Trading Member.

26.3. Noticee has submitted that the clauses in NSE Regulations do not constrain the earlier payout of funds to the clients after the successful EPI of shares to the clearing corporation and before the settlement of the transaction. I am inclined to accept the view of the notice. Thus, if the client has done early pay-in of securities, the credit of money is due to him, unless there is a finding that the moneys of other clients have been used to provide credit to the early payout client. However, no such finding is present in the inspection report. Further, it is to be noted that the broker is providing this as a better service to his clients. Therefore, I am of the view that the Noticee has not violated the provisions of Clause A (5) of Schedule II read with Regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992, Regulation 6.1.6.2 of NSE Regulations (F&O segment) and Regulation 6.1.5 (c) of Part A of NSE Capital Market Regulations.

27. **<u>Cyber security and cyber resilience –</u>**

27.1. It was observed in the cyber audit reports (April 01, 2021 to September 2021 and October 2021 to March 2022) that the auditor has raised many observations such as VAPT not conducted; encryption certificate not obtained for applications; and in-house developed products not tested regularly; and testing of security patches and updates not performed before deployment. It was also observed that the Noticee does not have any Incident Response Plan for Pandemic. The list of observations made from the two cyber security and systems audit reports were communicated to the member, and some of its responses were accepted. Remaining observations along with the Noticee's responses have been provided in the table - 16 below.

27.2. Cyber Security and Systems Audit Report – April 2021 – September, 2021

Table - 15

Observation	Noticee's Response
With respect to point 3(w), • Notice has not obtained STQC certificate • Noticee has not tested in-house developed products regularly, as the testing certificate provided by the Noticee pertains to 2016 and 2017	Noticee is in discussion with the vendors regarding the STQC certification.

27.3. Cyber Security and Systems Audit Report – October 2021 – March, 2022

Table 16

Sr. No.	Observations	Noticee's Response
3	Stock Brokers / Depository Participants should implement measures to prevent unauthorized access or copying or transmission of data / information held in contractual or fiduciary capacity. It should be ensured that confidentiality of information is not compromised during the process of exchanging and transferring information with external parties. Illustrative measures to ensure security during transportation of	Company policy dated April 04, 2022 for implemented measures to prevent access or copying or transmission of data / information held in contractual or fiduciary capacity, has been enclosed.

Sr. No.	Observations	Noticee's Response
	data over the internet are given in Annexure B of SEBI circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018	
4	Application security for Customer facing applications offered over the Internet such as IBTs (Internet Based Trading applications), portals containing sensitive or private information and Back office applications (repository of financial and personal information offered by Brokers to Customers) are paramount as they carry significant attack surfaces by virtue of being available publicly over the Internet for mass use. An illustrative list of measures for ensuring security in such applications is provided in Annexure C.	With reference to security for customer facing applications such as IBT - Such type of software are covered strong encryption by SSL and others. Further, Noticee is using secured FTP created by owned or purchase from vendors (Licensed)
5	Stock Brokers / Depository Participants should ensure that off the shelf products being used for core business functionality (such as Back office applications) should bear Indian Common criteria certification of Evaluation Assurance Level 4. The Common criteria certification in India is being provided by (STQC) Standardisation Testing and Quality Certification (Ministry of Electronics and Information	For In house software testing certificates have been attached and for outside vendors we attached the reply received from the vendor regarding STQC Certification.

Sr. No.	Observations	Noticee's Response
	Technology). Custom developed / in-house software and components need not obtain the certification, but have to undergo intensive regression testing, configuration testing etc. The scope of tests should include business logic and security controls.	
11	The stock brokers should formulate Standard Operating Procedure and adhere with the SOP for handling and reporting of Cyber Security Incidents. The aspects which shall form part of the SOP and which needs to be complied with by stock Brokers should be as per Exchange circular NSE/INSP/48163 dated May 03, 2021	Noticee has prepared a cyber SOP which states that these requirements are complied with. The SOP has been submitted with its response.
19	Organization needs to explore a mechanism for ensuring that the employee using remote access solution is indeed the same person to whom access has been granted and not another employee or unauthorized user. 1. At random intervals takes a picture with the webcam and uploads the same to the Member's server, 2. At random intervals pops up and prompts biometric authentication with a timeout period of a few seconds. If there is a timeout, this is	Policy for remote access has been submitted by the Noticee.

Sr. No.	Observations	Noticee's Response
	flagged on the Member server as a security event.	
20	A suitable video- recognition method has to be put in place to ensure that only the intended employee uses the device after logging in through remote access. Organization needs to implement short session timeouts for better security.	Policy for remote access has submitted by the Noticee.
21	Does the organization monitors Remote access continuously for any abnormal access and are the appropriate alerts and alarms generated to address this breach before the damage is done. ?	Noticee is using its private VPN which is purchased from a vendors for remote access facility to its official and registered vendors. And further attached the company policy.
22	Does the organization have appropriate risk mitigation mechanisms whenever remote access of data center resources is permitted for service providers?.	When Noticee needs the service from Service provider, it provides the access through its machine and there is a dedicated person for monitoring,
23	Does the organization have updated the incident response plan in view of the current pandemic? Does the plan cover following : 1.Increase awareness of information technology support mechanisms for employees who work remotely. 2. Implement cyber security	Noticee has prepared a cyber SOP which states that these requirements are complied with. The same has been attached herewith.

Sr. No.	Observations	Noticee's Response
	advisories received from SEBI, NSE, CERT-IN and NCIIPC on a regular basis. 3. Further, all the guidelines developed and implemented during pandemic situation shall become SOPs post Covid-19 situation for future preparedness. 4. Disable use of Macros in Microsoft office	

27.4. Stock Brokers are required to comply with the provisions of SEBI circular SEBI/HO/MIRSD/CIR/P/ 2018/147 dated December 03, 2018 which provides Cyber Security & Cyber Resilience framework for Stock Brokers / Depository Participants and also with SEBI circular no. CIR/MRD/ DMS/34/2013 dated November 6, 2013, which is regarding Annual System Audit of Stock Brokers/ Trading Members.

27.5. With respect to observation in the cyber security and systems audit report for the period April – September, 2021, Noticee had submitted testing certificate for its in-house developed products and software, which are dated December, 2016 and March, 2017. I note that the certificates are not recent and pertain to an older period. Thus, I find that the Noticee has not tested its in-house developed products and software regularly.

27.6. With respect to Cyber Security and Systems Audit Report – October 2021 – March, 2022, I note the following.

27.6.1. Point 3 – measures to prevent unauthorized access, copy or transmission of data – Noticee has submitted its policy dated April 04,

2022. I note that the policy document was formed subsequent to the period of the cyber security and systems audit.

27.6.2. Point 4 – Application security for customer facing applications offered over the internet – Noticee has submitted that such applications are covered by strong encryptions such as SSL and Noticee is using FTP created by own or purchased from vendors. I note that no evidence in support of its submissions has been made by the Noticee.

27.6.3. Point 5 – in-house testing of off the shelf products – Noticee has submitted copies of certificates which pertain to older period, i.e. December, 2016 and March, 2017. As per Clause 36 of the aforesaid SEBI circular dated December 03, 2018, the Noticee's in-house software and components should have undergone intensive regression testing, configuration testing etc. to test for business logic and security controls, on regular basis. However, I find that the Noticee has not tested its off the shelf products in the required manner.

27.6.4. Point 11, 23 – Noticee has submitted cyber security incident management procedure document. I note that the document is not dated.

27.6.5. Point 19, 20 – Noticee has submitted remote access controls policy and procedures document. I note that the document is not dated.

27.6.6. Point 21 – Noticee has submitted its policy dated April 04, 2022. I note that the policy document was formed subsequent to the period of the cyber security and systems audit.

27.6.7. Point 22 – Risk mitigation mechanisms when remote access is permitted to service providers – Noticee has submitted that the access is provided through its machine and there is a dedicated person for monitoring. I note that policy document or logs of remote access provided to outside vendors and details of the persons monitoring the vendors, were not submitted by the Noticee in support of its contentions.

27.7. I note that all the above observations were made in the cyber security and systems audit reports. Some of these were addressed by the Noticee subsequently. Noticee has also submitted a copy of its cyber security policy dated April 04, 2022. However, the Noticee has not provided recent testing certificates of in-house products. Further, its incident management procedure document and remote access controls policy and procedures document are not dated. Noticee has also not provided evidence in support of points no. 4 and 22. Thus, I find that the Noticee has violated the provisions of SEBI circular SEBI/HO/MIRSD/CIR/P/ 2018/147 dated December 03, 2018

28. Therefore, I find that Noticee has violated following provisions:

28.1. 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 to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016;

28.2. Clause 5.4 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 read with Clause 8.1.1 of Annexure to SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Clause 12. e of Annexure-A to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009

28.3. Clause 4.1.2, 4.1.5 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated, November 19, 2019 read with Clause 2 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/ 2020/146 dated July 31, 2020

28.4. Clause 2.6 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017

28.5. Clause 3.2 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with NSE circular NSE/INSP/33276 dated September 27, 2016.

28.6. Clause 7 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

28.7. Clause 6.1.1.e of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, NSE circular NSE/ INSP/28925 dated February 20, 2015 read with NSE/INSP/ 50229 dated November 08, 2021

28.8. Clause 2.4 of SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008 read with NSE Circular NSE/INSP/36786 dated January 19, 2018

28.9. SEBI circular SEBI/HO/MIRSD/CIR/P/2018/147 dated December 03, 2018 read with SEBI circular no. CIR/MRD/ DMS/34/2013 dated November 6, 2013

ISSUE II - Do the violations, if any, attract penalty under section 23D and Section 23H of SC(R) Act, 1956 and Section 15HB of the SEBI Act, 1992?

29. I note that the above violations make the Noticee liable for monetary penalty under section 23D and Section 23H of SC(R) Act, 1956 and Section 15HB of the SEBI Act, 1992, the text of which is reproduced hereunder:

<u>SC(R) Act, 1956</u>

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.*

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India 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.*

<u>SEBI Act, 1992</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.*

30. 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 ofcivil 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.*"

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992 and section 23J of SC(R) Act, 1956?

31. While determining the quantum of penalty under Section 15HB of the SEBI Act, 1992 and section 23D and section 23H of SC(R) Act, 1956, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 and section 23J of the SC(R) Act, 1956 respectively, which read as under:

SEBI Act, 1992

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

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

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

(c) the repetitive nature of the default.

SC(R) Act, 1956

<u>Factors to be taken into account while adjudging quantum of penalty</u>.

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

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

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

(c) the repetitive nature of the default.

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

32. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors /clients on account of default by Noticee. Further, as per the available records, it is observed that Noticee has not been penalised earlier for any of the aforesaid violations. Thus, violations are not repetitive in nature. However, I cannot ignore the fact that as a SEBI registered intermediary, Noticee was under statutory obligation to comply with the applicable circulars, rules and regulations. The very purpose of the said regulations is to deter wrong doing and promote ethical conduct in the securities market. I find that in many instances, Noticee has rectified the issues but such non-compliance deserves and attracts penalty.

ORDER

33. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15-I of the SEBI Act, Section 23-I of SC(R) Act, 1956 read with Rule 5 of the SEBI Adjudication Rules, 1995 and Rule 5 of SCRA Adjudication Rules, 2005, I hereby impose following penalty upon Noticee.

Sr. No.	Name of Noticee	Violation provisions	Penal Provisions	Penalty
1	EVERMORE SHARE BROKING	○ Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and	Section 23D and Section 23H of SC(R) Act, 1956,	₹ 15,00,000/- (Rupees Fifteen Lakh) under Section

Sr. No.	Name of Noticee	Violation provisions	Penal Provisions	Penalty
	PRIVATE LIMITED	Clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; ○ Clause 5.4 of SEBI circular SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 read with Clause 8.1.1 of Annexure to SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Clause 12. e of Annexure-A to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 ○ Clause 4.1.2, 4.1.5 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/139 dated, November 19, 2019 read with Clause 2 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/ 2020/146 dated July 31, 2020 ○ Clause 2.6, 3.2, 6.1.1 (e), 7 of Annexure to SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI circular	Section 15HB of SEBI Act, 1992	23D of SC(R) Act, 1956; ₹ 5,00,000/- (Rupees Five Lakh) under Section 15HB of SEBI Act, 1992 and Section 23H of SC(R) Act, 1956 **TOTAL PENALTY AMOUNT - ₹20,00,000 (Rupees Twenty Lakh)**

Sr. No.	Name of Noticee	Violation provisions	Penal Provisions	Penalty
		CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 ○ NSE circular NSE/INSP/33276 dated September 27, 2016 ○ NSE circular NSE/ INSP/28925 dated February 20, 2015 read with NSE/INSP/ 50229 dated November 08, 2021 ○ Clause 2.4 of SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008 read with NSE Circular NSE/INSP/36786 dated January 19, 2018 • SEBI circular SEBI/HO/MIRSD/CIR/P/2018/147 dated December 03, 2018 read with SEBI circular no. CIR/MRD/ DMS/34/2013 dated November 6, 2013		

34. 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.

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

36. In terms of Rule 6 of the SEBI Adjudication Rules, 1995 and Rule 6 of SCRA Adjudication Rules, 2005, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: FEBRUARY 15, 2024	**BARNALI MUKHERJEE**
PLACE: MUMBAI	**ADJUDICATING OFFICER**