BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/SM/DD/ Order/SM/DD/2022-23/16586]

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

In respect of

M/s. Sykes and Ray Equities (I) Ltd.

(SEBI Registration No. : INZ000199833,)

In the matter of **M/s. Sykes and Ray Equities (I) Ltd.**

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as ***"*SEBI*"***), National Stock Exchange of India Limited (herein after referred to as "**NSE**"), BSE Ltd. (herein after referred to as "**BSE**"), and Central Depository Services Ltd (herein after referred to as "**CDSL**") conducted a comprehensive inspection of M/s. Sykes and Ray Equities (I) Ltd. (hereinafter referred to as ***"*Noticee/Stock Broker/Broker/DP/Sykes*"***) w.r.t. its Stock Broking and Depository Participants (hereinafter referred to as '**DP**') activities from February 04, 2019 to February 08, 2019. The period covered in the inspection was from April 01, 2017 to January 31, 2019 (hereinafter referred to as '**Inspection Period**').

2. Noticee is a SEBI-registered Stock Broker and DP, having SEBI registration number as INZ000199833 as Stock Broker and IN-DP-162-2015 as a DP of CDSL.

3. Based on the findings of inspection and the reply of Noticee, SEBI initiated adjudication proceedings against Noticee in terms of Section 23D of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SCRA"**), Section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) and Section 15A(b) of SEBI Act, for the alleged violations of the following provisions by Noticee:

   3.1. Section 23D of SCRA read with clause 1 of SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993 (herein after referred to as "**Transactions Regulation Circular**") and clauses 3, 3.2 & 7 of Annexure to SEBI circular SEBI / HO/ MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016 (herein after referred to as "**Enhanced Supervision Circular**")

3.2. SEBI circular SEBI/MIRSD/SE/CIR-19/2009 dated December 03, 2009 (herein after referred to as"**SEBI Circular dated December 03, 2009**") read with NSE circular NSE/INSP/24849 dated October 29, 2013

3.3. Annexure A to SEBI circular dated December 03, 2009

3.4. Clause B of SEBI circular CIR/MIRSD/15/2011 dated August 02, 2011

3.5. Clause 6 of SEBI circular CIR/MIRSD/66/2016 dated July 21, 2016

3.6. Clause 3 of SEBI circular MIRSD/CIR-5/2012 dated April 13, 2012

3.7. Clause A(5) of regulation 9 of SEBI (Stock Broker) Regulations, 1992(herein after referred to as "**Broker Regulations/Stock Broker Regulations**") read with exchange circulars NSE/MEMB/3574 dated August 29, 2002, NSE/MEMB/3635 dated September 25, 2002 and NSE/MA/22732 dated February 13, 2013

3.8. Clause 1 of SEBI circular MIRSD/CIR-26/2011 dated December 23, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide communique dated January 20, 2020, Ms. Sangeeta Rathod was appointed as the Adjudicating Officer (hereinafter referred to as '**AO**') under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995(herein after referred to as "**SEBI Adjudication Rules**") and Section 23-I of the SCRA and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (herein after referred to as "**SCRA Adjudication Rules**") (both Rules together are hereinafter referred to as "**Adjudication Rules**") to inquire into and adjudge under the provisions of Section 23D of SCRA, Section 15A(b) of SEBI Act and Section 15 HB of the SEBI Act, the aforesaid alleged violations by Noticee. Subsequent to transfer of Ms. Sangeeta Rathod, Shri Prasanta Mahapatra was appointed as the AO in the matter. Thereafter, the undersigned was appointed as the AO in the matter by SEBI vide order dated December 04, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (hereinafter being referred to as the "**SCN**") dated August 11, 2020 was issued to Noticee in terms Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed upon

Noticee under Section 23D of SCRA, Section 15A (b) of SEBI Act and Section 15HB of SEBI Act for the aforesaid violations alleged to have been committed by Noticee.

6. The SCN was sent to Noticee through Speed Post AD ("**SPAD**") on August 11, 2020 and digitally signed email dated August 18, 2020, and was duly served upon Noticee. Vide email dated September 02, 2020, Noticee sought an extension of one month for submitting additional reply citing the reasons of Covid 19 pandemic. Thereafter, Noticee vide its letter dated October 01, 2020, submitted reply to the SCN. Subsequent to appointment of undersigned as AO, in the interest of natural justice, an opportunity of personal hearing was granted to Noticee on July 19, 2021, vide hearing notice dated July 02, 2021. The said hearing notice was sent to Noticee through SPAD and through digitally signed email and was duly served upon Noticee. On the scheduled date of hearing, i.e., July 19, 2021, authorised representatives of Noticee (**ARs**), namely, Shri Sudhir Marathe, Director of Noticee, Shri. Sidhant Prabhu, Compliance officer of Noticee and Shri Rajesh Shah, Internal Auditor of Noticee, attended the hearing and reiterated the submission made by Noticee vide its letter dated October 01, 2020. During the hearing, the ARs requested additional time till July 30, 2021, for submitting additional reply which was acceded to. On July 30, 2021, Noticee submitted additional reply in the matter.

7. Subsequently, vide email dated February 25, 2022, Noticee was informed that there was an error in the figures mentioned in "**Annexure-B (para-4 of SCN dated August 11, 2020)**", which had been sent to Noticee along with the SCN and therefore, a revised Annexure-B was provided to Noticee vide the said email and Noticee was granted 14 days' time to submit additional reply, if any. Vide email as well as letter dated March 11, 2022, Noticee requested time till March 18, 2022, for submitting their reply. The request of Noticee was acceded to and the same was informed to Noticee vide email dated March 16, 2022. Vide email dated March 17, 2022, Noticee forwarded a letter dated March 14, 2022, submitting their additional reply w.r.t. revised-Annexure B sent to it. Vide email dated April 20, 2022, Noticee requested for opportunity of personal hearing on or after May 02, 2022. Accordingly, vide email dated April 27, 2022, Noticee was granted an opportunity of personal hearing in the matter on May 04, 2022. On the scheduled date of hearing, ARs, Mr. Sudhir Marathe and Mr. Siddhant Prabhu, attended the hearing and reiterated the submission made by it vide letter dated March 14, 2022, wr.t. revised Annexure-B and requested for time to make additional submissions which was acceded to. Vide email dated May 10, 2022, Noticee submitted additional reply w.r.t. revised Annexure-B.

8. The allegations levelled against Noticee, the submissions of Noticee and findings in respect of the same are dealt with in the subsequent paragraphs of this order.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

9. I have carefully perused the charges levelled against Noticee in the SCN and the material available on record. I have also perused the submissions made by Noticee in this regard. The issues that arise for consideration in the present case are:

    I. Whether Noticee has violated the provisions as mentioned in para 3 of the order?
    II. Do the violations, if any, attract monetary penalty under Section 23D of SCRA, Sections 15A(b) and 15HB of SEBI Act as specified in para 3 of the order?
    III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

Issue I: Whether Noticee has violated the following provisions:

a) Section 23D of SCRA read with clause 1 of Transactions Regulation Circular and clauses 3, 3.2 & 7 of Annexure to Enhanced Supervision Circular
b) SEBI circular SEBI/MIRSD/SE/CIR-19/2009 dated December 03, 2009 read with NSE circular NSE/INSP/24849 dated October 29, 2013
c) Annexure A to SEBI circular SEBI/MIRSD/SE/CIR-19/2009 dated December 03, 2009
d) Clause B of SEBI circular CIR/MIRSD/15/2011 dated August 02, 2011
e) Clause 6 of SEBI circular CIR/MIRSD/66/2016 dated July 21, 2016
f) Clause 3 of SEBI circular MIRSD/CIR-5/2012 dated April 13, 2012
g) Clause A(5) of regulation 9 of SEBI (Stock Broker) Regulations, 1992 read with exchange circulars NSE/MEMB/3574 dated August 29, 2002, NSE/MEMB/3635 dated September 25, 2002 and NSE/MA/22732 dated February 13, 2013
h) Clause 1 of SEBI circular MIRSD/CIR-26/2011 dated December 23, 2011

10. I now proceed to deal with the aforementioned allegations levelled against Noticee in the SCN, the submissions made by Noticee in this regard and record my observations/ findings as under:

A. **<u>Funds of credit balance clients used for settlement obligation of debit balance clients</u>**

<u>Allegation in the SCN:</u>

1. *OD selected a sample comprising of 54 days, which included all trading dates in the month of February 2018 and all dates on which Enhanced Supervision data was submitted starting March 28, 2018 till Nov 22, 2018, to detect possible misutilization of clients' funds. OD carried out reconciliation of clients' funds lying with the Noticee with total available funds i.e. cash and cash equivalents with the Noticee and with the Clearing Corporation (details enclosed as **Annexure B**), based on principles and guidelines stipulated in clause 3 of SEBI circular SEBI /HO /MIRSD /MIRSD2 /CIR/P/ 2016 /95 dated September 26, 2016. OD noted that on 38 dates in the sample, funds of credit balance clients were used for settlement obligations of debit balance clients, and noted the amount of misutilization on a date, ranging from Rs 25.01 Lakh to Rs 12.25 Crore per date. Thus, OD observed that Noticee utilized funds of clients' having credit balance for settlement obligations of clients' having debit balance, allegedly violating section 23D of the SCRA, 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.*

Revised Annexure-B sent to Noticee on February 25, 2022

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) - REVISED CREDITORS- Our Calculation	REVISED G
		A	**B**	**Revised c**	**G=A+B-C**
1	31.07.17	76754869	155525000	281158794	-48878925
2	31.08.17	84500782	158825000	247296027	-3970245
3	29.12.17	86669304	217554190	356205583	-51982089
4	02.02.18	35844239	202411070	319275999	-81020690
5	05.02.18	57264167	215333690	322314216	-49716358

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) - REVISED CREDITORS- Our Calculation	REVISED G
6	06.02.18	95750244	207340970	320699252	-17608039
7	07.02.18	58867073	208348250	316006091	-48790768
8	08.02.18	69655696	208155660	308248490	-30437134
9	09.02.18	89520132	187962680	326064984	-48582172
10	12.02.18	116336222	202884910	345690578	-26469446
11	14.02.18	81004418	220384910	348224734	-46835406
12	15.02.18	78044825	220407010	300953763	-2501928
13	16.02.18	50783569	220414160	293825164	-22627435
14	26.02.18	70030892	196395670	292395130	-25968568
15	27.02.18	35930741	203395670	262570180	-23243768
16	06.04.18	38999483	213185630	320509895	-68324782
17	20.04.18	32956967	162691000	250352493	-54704526
18	27.04.18	51220292	154691000	245650093	-39738801
19	04.05.18	28651540	144791000	247740863	-74298323
20	11.05.18	32661333	144791000	230179371	-52727037
21	18.05.18	20269078	144791000	193630716	-28570639
22	01.06.18	49805357	144791000	233113922	-38517565
23	15.06.18	39032969	177791000	247697499	-30873530
24	22.06.18	45331554	155191028	227219482	-26696901
25	20.06.18	35212949	193323602	264896861	-36360310
26	27.06.18	33442692	243236016	318503749	-41825042
27	03.08.18	28297052	216965969	337084864	-91821843
28	10.08.18	54306295	228008479	404833854	-122519079
29	24.08.18	38801419	212589947	325375306	-73983940
30	07.09.18	21145064	173571181	298864274	-104148029
31	14.09.18	17894507	173605673	245103730	-53603549
32	21.09.18	14490930	196146408	259744937	-49107600
33	28.09.18	28537801	180195864	233854523	-25120857
34	05.10.18	55471872	197653388	281750057	-28624797
35	02.11.18	21805786	193395457	292052581	-76851339
36	09.11.18	16962978	184437322	260012448	-58612148
37	16.11.18	32517408	192412759	293790163	-68859996
38	22.11.18	22375837	192463208	240976392	-26137347

Reply of Noticee

Letter dated March 14, 2022

2. *With regard to observation at paragraph 4 of SCN we wish to humbly submit that we have not done any misuse of client's funds as alleged. We further submit that no specific instance of utilization of funds of clients having credit balance to meet the pay-in obligation of clients having debit balance, as alleged in the SCN, is furnished to us. We state that the SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated 26.09.2016, which has been cited as an allegation against us deals with the 'enhanced Supervision of Stock Brokers/Depository Participants'. Page 12 of the said SEBI Circular reads as under:*

   "If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges. Thereafter, the absolute value of G shall be compared with debit balance of all clients as per client ledger D as follows:

   If the absolute value of (G) is lesser than |D|, then the stock broker has possibly utilised funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G."

   From the above, we submit that the aforesaid parameter is considered only as an alert parameter and not an actual misutilization.

3. *On perusal of the revised Annexure B furnished by you now, we further note that the inspection team has not taken into consideration balances in the Fixed Deposits with us on those dates alleged in the revised Annexure B to the SCN.*

4. *We humbly state that we have already submitted a comparison table containing the correct calculations of all available assets on the given dates mentioned in the SCN. Our calculation is also certified by a Chartered Accountant. In this regard, we are re-attaching herewith* ***Annexure 1*** *for your ready reference. We state that we are enclosing the certified copy, the original of which was submitted to SEBI along with our reply dated 06.06.2019. Further, all relevant documents relied upon in support of this*

*reworked calculation are annexed in soft copy in a CD. A table showing difference in the calculation by the operational Department, SEBI **("OD")** and our calculation is also attached as **Annexure 1.1***

5. *On perusal of the actual reworked calculation, it may be noted that the 'Column G' is not negative on any of the 38 dates mentioned by the OD in its 'Annexure B'. It is worthwhile to note that the documents such as the Fixed Deposit receipts are contemporaneous and hence, these documents unequivocally demonstrate that there is no wrongdoing whatsoever by as alleged in the SCN. It is therefore evident that the OD observation that we utilized funds of clients having credit balance for settlement obligations of clients having debit balances is incorrect, is not based on complete facts and deserves to be dismissed. In view of the same, the allegation that we have violated the provisions of section 23D of the SCRA, 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 is incorrect and the SCN deserves to be disposed of without any penalty upon us.*

6. *We would like to humbly reiterate that the calculation made by the OD is incorrect owing to the following:*
    i. *The revised Annexure B shared vide your email dtd 25.02.2022 does not provide any supporting information as to how the figures were arrived at by the OD.*
    ii. *Free FDRs available were not considered by OD. The calculation and supporting to the free FDRs available is provided in soft copy in CD.*
    iii. *As a result, the figures of Client Balance, Bank Balance and Collateral as per correct records of ours and incorrect and incomplete figures considered by OD do not tally. Documents in support of each of the figures furnished by us is provided in soft copy in CD, for ready reference.*
    iv. *Within the framework of SEBI circulars, we have given mandate to our bankers' viz. Axis Bank and HDFC Bank to move funds from own/ Overdraft account to meet the pay-in obligations of clients whenever there is a shortfall in client's account or client's cheque presented for clearing is awaiting clearance. This demonstrates that we always had enough funds. (Copy of letter attached as **Annexure-2**.)*

        From the above facts, it is evident that there were enough funds available with us and there is not a single instance of misutilization of funds by us.
    v. *Copy of NSE circular dtd.26.05.2020 clarifying that "any free FDR available with the member shall be considered "is attached as **Annexure- 3**.*

7. *All other documents for each date in separate folders are being submitted………….. .*

8. *From the above facts, it is evident that there were enough funds available with us and that there is not a single instance of misutilization of funds by us. Consequently, there is no violation by us which is alleged in the SCN and the SCN deserves to be disposed of without any penalty.*

Letter dated May 10, 2022

9. *There are in all 38 instances of alleged misuse of client funds as per the revised Annexure B. We have replied for each of the instances vide our letter dated 14.03.2022 along with supporting.*

10. *However, as we have got another opportunity of a personal hearing on 04.05.2022, please find attached as Annexure-1 comparison table showing SEBI data (as per revised Annexure B) and our data showing details of total fund balance available, Collateral deposited and Total credit balances of all clients. We are submitting hard copies of top 10 days (where G is negative as per SEBI) along with supporting documents thereto for ready reference of the SEBI team.*

11. *A detailed analysis of the comparison table shows that there is material difference in each instance between SEBI data and our data. The supporting to the revised Annexure B of SEBI is not provided and hence not possible to find out the cause of difference in the data. We once again humbly request you to provide us data relied upon in support of revised Annexure B of SEBI. However we are providing supporting documents of our data for each of the instances.*

12. *We humbly wish to bring to your specific attention, difference in column total credit balances o£ all clients for each date. When the correct balances of the column ,total credit balances of all clients is taken, the total number of instances where G is negative as per SEBI shall reduce to 22 from 38, also the average amount of G negative (as per SEBI) shall also reduce. When the Free FDRs available is considered there shall be no non-compliance observed. Documentary supporting and detailed working of the Free FDRs available is already submitted in soft copy in a CD vide our letter dated 14.03.2022, however the same is once again being submitted along with this letter as Annexure 2 in soft copy in a CD. It is important that the differences (as per SEBI and as per our working) are looked into. We are attaching in soft copy Annexure 3*

containing trial balance working for each date giving details of codes to be included and excluded with reason thereto to arrive at the final balance of total credit balances of all clients. Please check all sheets in excel file of the attached trial balance working of our Annexure 3.

13. Submission with supporting documents for all 38 days have already been made in soft copy in a CD vide our letter dated 14.03.2022. The same is again being submitted date wise in soft copy in a CD along with this letter.

14. On perusal of all aforesaid documents, it is evident that we have not violated any provision(s) of the SCRA, 1956 or the circulars mentioned in the SCN. In view of the same, there is no case to impose penalty upon us under section 15HB and 15A (b) of the SEBI Act, 1992 or 23 D of SCRA, 1956. In view of the above, the proceedings initiated against us vide the SCN dated August 11, 2020 deserve to be disposed of without any penalty upon us. Accordingly, we request you to dispose of the SCN without any penalty, based on our aforesaid submissions supported by us with the contemporaneous documents.

Observations/Findings

15. W.r.t. allegation regarding misutilization of funds credit balance clients, I note that Noticee has denied the said allegation. Noticee has further contended that SEBI has not provided any supporting information as to how the figures were arrived by the Operational Department. In this regard, I note that before the commencement of inspection, Noticee vide its letters dated December 10, 2018, had submitted information about its broking activities which, *inter-alia,* includes list of all bank accounts, demat accounts, proprietary trading turnover, trading turnover of directors trading turnover, bank books in Excel sheet format, Bank statement (in PDF format) of all clients bank accounts operated/ maintained by the broker etc to SEBI. I also note that before commencement of inspection, SEBI had instructed Noticee that all the original bank statements should be available at the time of inspection. Accordingly, any data that has been taken into consideration for calculations by SEBI is based on the information provided by Noticee to SEBI at the time of inspection.

16. I note that Enhanced Supervision circular specifies the method for arriving value of “G”. As per Enhanced Supervision circular, the value of “G” is arrived after considering the funds available in client bank accounts and cash/cash equivalent deposits with clearing corporation/clearing member- across all Stock Exchanges. From the said figures, the

figures of total credit balance clients (after adjustment of open bills and uncleared cheques) needs to be deducted. I also note that the value of “G” was ascertained, based on the data provided by Noticee like bank statements, trial balance etc. during the course of inspection.

17. I also note that vide letter dated April 15, 2019, SEBI had forwarded the findings of inspection to Noticee, in response to which Noticee, vide its email dated June 10, 2019, submitted its reply. On perusal of the reply submitted by Noticee, I note that Noticee in its aforesaid reply had not disputed that they had not been provided figures for arriving the value of “G” by SEBI inspection team, but had only stated that, “….*a sample data generated by inspection team at the time of inspection was checked and agreed that there was some system error resulting in the mismatch of figures. In spite of that we are happy to mention that G is positive as there was no intention of misutilisation of the client funds. …”* . I also note that Noticee had submitted the revised calculation of “G” to SEBI while submitting its reply to the findings of inspection. Noticee is now taking plea that supporting documents were not provided to it. I find that plea taken by Noticee at this stage that they had not been provided supporting documents is not tenable and therefore, this contention of Noticee lacks merit.

18. I also note that while analysing Noticee’s reply dated June 10, 2019, SEBI had taken some of Noticee’s contentions into consideration based on which SEBI provided a revised “G” negative values for 38 instances. The revised calculations of 38 instances were forwarded to Noticee vide email dated February 25, 2012 as ‘revised Annexure-B to SCN’. Noticee, vide its emails/letters dated March 14, 2022 and May 10, 2022, provided its reply to the revised Annexure-B.

19. I note that Noticee, in its reply, has contended that as per Enhanced Supervision Circular, negative value of G acts as an alert to the Stock Exchange and after calculation of G, the absolute value of G needs to be compared with debit balance clients. If the absolute value of G is lesser than D, the broker has possibly utilized the funds of credit balance clients towards settlement obligation of debit balance clients to the extent of the value of G. Noticee has further stated that the aforesaid parameters is considered only as an alert parameter and not an actual misutilization. In this regard, I find that the idea of calculating “G” is to see whether the funds of credit balance clients are available with the broker or not, to the extent of their credit balances and if there is any shortfall in the availability of credit balance clients’ funds, which is reflected by the

negative "G", it would clearly mean that funds of the credit balance clients have been utilized either for the settlement obligations of debit balance clients or for the stock brokers' own purposes. Therefore, I do not agree with this argument of Noticee.

20. Noticee, in its reply, has further contended that it had given mandate to its bankers viz. Axis Bank and HDFC Bank, to move funds from their own /overdraft account to meet pay-in obligations of the clients whenever there was a shortfall in clients' account or whenever client's cheque were not cleared, which shows that they had enough funds. In this regard, I note that the funds in the bank accounts were in Noticee's own name and not in the name of its clients, nor in its clients' accounts. Moreover, the overdraft facilities with HDFC Bank and Axis Bank have been taken from own accounts of Noticee and are not funded by way of clients' money. Therefore, I find that this contention raised by Noticee is not valid.

21. Noticee has also contended that SEBI has not considered the free Fixed Deposit Receipts ("FDR") balance while calculating the value of "G". Noticee, in its submission, has provided bank confirmation from Axis Bank, HDFC Bank and Corporation Bank for the creation of Fixed Deposit (**FD**). Further, Noticee has provided copies of FDs/FD statements in support of its contention. I have perused following FDs submitted by Noticee:

Sr. No.	Bank Name	FDR number	Amount (Rs)
1	HDFC Bank	FDH-50300213826005	12,06,260.00
2		FDH50300124287251	99,50,000.40
3	AXIS Bank Limited	913040047377092	14,00,000.00
4	Corporation Bank	530401719902331	72,38,204.00

22. From the aforesaid FDs, I observe that it is not possible to ascertain the source of funds from which such FDs were created i.e. whether from Noticee's clients' bank accounts or its own bank account and whether the FDs were free from all charges/lien. In view of the same, I am not inclined to give benefit of doubt to Noticee w.r.t. its contention that free FDs were not considered by SEBI for calculating the value of "G".

23. Noticee in its submission has also contended that there was a mismatch between the figures of client balance, bank balance and collateral as per its records and as given in SCN. In this regard, I note that Noticee had been provided all the details at the time of communicating the findings of inspection. However, Noticee had not disputed the said figures at the time of submitting its reply to findings of inspection. Therefore, raising of

contention regarding the mismatch between the figures of client balance, bank balance and collateral which have been considered for computation of value of “G” at this stage appears to be an afterthought on the part of Noticee. I also note that Noticee has accepted that the value of “G” would be negative in 22 instances, if free FDR is not considered for the purpose of calculation of value of “G” which amounts to admission of default on the part of Noticee.

24. In view of the above, I find that Noticee has utilized the funds of credit balance clients for settlement obligations of clients having debit balance. In view of the above, I find allegation levelled against Noticee that it has violated Section 23D of SCRA read with Clause 1 of Transactions Regulation Circular and Clause 3 of Annexure to Enhanced Supervision Circular stands established.

B. Transfer of securities from client beneficiary accounts to own accounts

Allegation in the SCN

1. *OD observed regarding off-market transfer of securities from client beneficiary & collateral accounts by Noticee during the IP that, securities from client accounts were transferred to non-clients. OD observed that in 43 instances involving 1,33,483 shares (details enclosed as* ***Annexure C****), Noticee transferred securities from client beneficiary account to own account, allegedly violating section 23D of the SCRA, 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.*

Reply of Noticee

Letter dated October 01, 2020

2. *With regard to allegation at paragraph 5 of SCN that OD observed 43 instances involving a total of 1,33,483 shares of off-market transfer of securities by us from clients'' beneficiary & collateral accounts' to non-clients/to our own account, we state that the said observation of OD is based on incomplete/ incorrect appreciation of facts by the OD. We wish to submit that the said transfer of securities from the 'beneficiary & collateral accounts' of clients was not done out of securities owned by our clients, but was that of the securities 'owned by us' to our own account. In this regard we wish to highlight that 'clauses 1.C and 1.D' of the SEBI circular SMD/SED/CIR/93/23321 dated*

November 18, 1993 authorizes us to transfer our own funds/securities from the clients' accounts. Thus, we have not done any wrong transfer of securities from the 'beneficiary & collateral accounts' of clients to our own account as alleged at paragraph 5 of the SCN. We have also reworked the details furnished in Annexure C to SCN based on actual ownership of securities and such actual working with regard to those instances referred in the SCN is placed as Annexure- -2. We are also submitting a CD containing the documents i.e. trade files of the exchange evidencing our own 'code' (and not the 'code' of any of our clients) in support of our submission. Thus, on perusal of these details supported with the contemporaneous documents, it is evident that there is not a single instance of transfer of securities belonging to any of our clients to our own account. In view of the above, the allegation that we violated the provisions of section 23D of the SCRA, 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 is not correct and the SCN deserves to be disposed of without any penalty upon us.

Letter dated July 30, 2021

3. *As submitted and explained during the personal hearing we once again reiterate that there is no misuse or transfer of client shares to own account.*

4. *We humbly request to draw your attention to the following facts:*

   i. *All shares that were transferred were that of own and not of the client. Documentary evidence attached as **Annexure 4** and supporting to **Annexure4**.*
   ii. *Even our own shares which were transferred to ourselves through off market transfer were only on 5 dates. Most of the cases (over 91% are on a single day i.e. 24.05.2018 and it is 1 each on 06.09.2018, 13.07.2018, 27.08.2018 or 2 on 05.03.2018 dates.*

5. *We have submitted earlier and again attaching trade files and Sauda summary of the relevant dates where it can be seen that the shares were our own and not of the client. **Annexure 4** and its supporting are attached in hard and soft copy in CD**.***

6. *From the facts and contemporaneous documents submitted by us, it is evident that there is no misuse or transfer of clients' shares to us, as alleged. Consequently, there is no violation by us which is alleged in the SCN and the SCN deserves to be disposed of without any penalty.*

Observations/Findings

7. It has been alleged that Noticee has violated Section 23D of the SCRA read with clause 1 of Transactions Regulation Circular and clause 3 of Annexure to Enhanced Supervision Circular. However, Clause 1 of Annexure to Transactions Regulation Circular provides an obligation on the part of members' brokers to keep the money of the clients in a separate account and their own money in a separate account. Further, the said Clause, *inter-alia* specifies about the money to be paid into "clients accounts" and money to be withdrawn from "clients accounts." Thus I find that Clause 1 of Annexure to Transaction Circular deals with movement of funds from clients account to broker's own account and vice versa. Similarly, it also casts an obligation on the broker /member to keep separate accounts for clients money and own money. Further, Clause 3 of Annexure to Enhanced Supervision Circular specifies about monitoring of clients' funds lying with Stock broker by the Stock Exchanges. Thus, I note that the aforesaid clauses deal with client funds only, not client securities. Thus, I find that Clause 1 of Annexure to Transactions Regulation Circular and Clause 3 of Annexure to Enhanced Supervision Circular are not applicable to facts and circumstances involved in the aforementioned allegation.

8. It has been stated in the SCN that in 43 instances involving 1,33,483 shares (details enclosed as Annexure C), Noticee transferred securities from client beneficiary accounts to own account. However, on perusal of Annexure C provided to Noticee as a part of SCN, I note that the Annexure lists out 61 instances involving 1,55,238 shares instead of 43 instances involving 1,33,843 shares as stated in the SCN. From the submissions made by Noticee, I note that it has not disputed the impugned figures quoted in Annexure C to the SCN.

9. I note from the records that in these 61 instances, Noticee had transferred the shares to clients' securities accounts and then subsequently, transferred the shares to its own accounts through off-market transactions. Noticee, in its reply, has contended that the securities, which were transferred, belonged to them and were not of its clients. To support their contention, Noticee has provided the trade files and Sauda Register. I note that as per the rules/ regulations /circulars issued by SEBI/BSE/NSE, Noticee has to mandatorily transfer securities from its pool account to its own account for its proprietary trades. However, I note that Noticee failed to transfer securities of its proprietary trades to its own account directly from pool account, as mandated.

Accordingly, I note that Noticee has co-mingled its own securities and client securities. I also note that Noticee failed to provide any justification or reason for transferring such securities to clients' accounts in the first place. Hence, I do not accept the aforesaid contention of Noticee. In view of the above, I find that Noticee failed to segregate clients' securities and its own securities. Accordingly, I find that the allegation that Noticee has violated Section 23D of SCRA stands established.

C. <u>Non settlement of credit fund and securities of inactive clients</u>

<u>Allegation in the SCN</u>

1. *OD observed regarding settlement of clients' accounts on monthly/quarterly basis as per the preference obtained from clients, by considering the ledger balances of clients across Exchanges/Segments and collaterals, cash maintained as margin against retention of clients' obligation, cash market turnover and margin requirement that, in a sample comprising of all inactive clients for certain quarters in the IP, i.e. clients who had not traded during given quarter, having credit fund/securities balance and observed unsettled funds ranging from Rs 1.29 Crore to Rs 19.70 Crore in the sample with following details:*

QTR	***Number of unsettled inactive clients***	***Total (Rs)***
Jun-17	*2324*	*9,53,47,071*
Sep-17	*1938*	*8,59,48,308*
Dec-17	*1436*	*11,27,86,370*
Mar-18	*1068*	*1,29,98,038*
Jun-18	*1216*	*19,70,44,566*
Sep-18	*293*	*4,49,71,457*

Thus, OD observed that Noticee did not carry out settlement of credit fund balance and securities of certain inactive clients, allegedly violating SEBI circular SEBI/MIRSD/SE/CIR-19/2009 dated December 03, 2009 read with NSE circular NSE/INSP/24849 dated October 29, 2013.

<u>Reply of Noticee</u>

<u>Letter dated October 01, 2020</u>

2. *As regards the observation of OD at paragraph 6 of the SCN that we did not carry out settlement of credit fund balance and securities of certain inactive clients, we stat*

e that the said observation of OD is not correct and for the reasons elaborated herein below, we deny the allegation at paragraph 6 of the SCN. We are attaching herewith Annexure-3 containing Summary table showing breakup of settlement in respect of those clients alleged by the OD. For your ready reference, we are also reproducing below the summary of the said Annexure-3.

Quarter	***June-17***		***Sep-17***		***Dec-17***		***Mar-18***		***July-18***		***Sep-18***	
Details	***No. of codes***	***Value in Lakhs***	***No. of codes***	***Value in Lakhs***	***No. of codes***	***Value in Lakhs***	***No. of codes***	***Value in Lakhs***	***No. of codes***	***Value in Lakhs***	***No. of codes***	***Value in Lakhs***
Total inaction as per SEBI	*2324*	*953.47*	*1938*	*859.48*	*1436*	*1127.86*	*1068*	*129.98*	*1216*	*1970.45*	*293*	*449.71*
Freezed by Regulators	*3*	*5.14*	*3*	*5.07*	*3*	*5.07*	*6*	*7.91*	*3*	*0.13*	*1*	*4.22*
MTF client, NRI, Custodian settle, A/c opened during the quarter not required to settle	*27*	*0.44*	*22*	*30.08*	*28*	*88.70*	*30*	*9.05*	*21*	*0.91*	*28*	*289.71*
Non client account, not required to settle	*661*	*653.31*	*645*	*675.56*	*653*	*838.65*	*58*	*21.95*	*676*	*1938.17*	*3*	*6.09*
POI fails. CDSL DP, NSD; Stock.	*47*	*9.49*	*21*	*12.23*	*11*	*8.48*	*8*	*5.45*	*2*	*0.27*	*11*	*8.85*
Settled clients	*1586*	*285.10*	*1247*	*136.55*	*741*	*186.96*	*966*	*85.62*	*514*	*30.97*	*250*	*140.85*

On perusal of the above summary, it is evident that we have done settlement of all clients on a regular basis in accordance with relevant SEBI circulars and there is no violation by us, as alleged.

3. *Further, in support of Annexure-3 to our response, the client wise detailed data with our comments in respect of each of the instances furnished at 'Annexure D' of the SCN is also being submitted by us as Annexure 3.1 containing two sheets (Summary and detailed)with this response on a CD. Additionally, for ease of reference, the retention statements along with ledgers for clients where the amount was Rs. 50,000/- and above which has been indicated at 'Annexure D' of the SCN is also being submitted with this response on a CD. On perusal of these details including the summary table submitted by us, it is evident that we have done settlement of all clients on a regular basis in accordance with relevant SEBI circulars and there is no violation by us as alleged. In view of the same, the SCN deserves to be disposed of without any*

penalty upon us. Incidentally, we may submit that OD had neither raised any query in this regard at the inspection stage nor observed/communicated the same to us by OD at the inspection stage.

4. *With regard to allegation at paragraph 6, we further submit that out of the funds of clients settled by us in accordance with the stipulations in relevant SEBI circulars, for certain clients the 'pay outs' had failed since those clients had not furnished valid DP details despite repeated follow-ups by us. (Details of such clients are also furnished at Annexure-3.1 in a CD to this response).Thus, it may be appreciated that on our part while we had duly made the settlements of clients in compliance with the stipulations in relevant SEBI circulars, the pay outs had failed for a few clients due to the aforesaid reason. We are also submitting hard copies of 'Proof of Delivery'/'returned letters' in respect of letters and reminders sent by us to those clients requesting them to submit correct DP details to us as Annexure 3.2. We may submit that SEBI circular no. SEBI /MIRSD /SE / CIR-19/ 2009 dated December 03, 2009, which has been alleged at paragraph 6 of SCN, provides for maintaining certain 'Mandatory Documents' in respect of each client and we have maintained all those documents. Thus, on perusal of these details and documents, it is evident that the allegation at paragraph 6 of the SCN that we did not carry out settlement of credit fund balance and securities of certain inactive client is not correct. Consequently, the allegation that we violated SEBI circular no. SEBI/MIRSD/SE/CIR-19/2009 dated December 03, 2009 read with NSE circular NSE/INSP/24849 dated October 29, 2013 is not correct and hence the SCN deserves to be disposed of without any penalty upon us.*

Letter dated July 30, 2021

5. *We have vide our reply dated 01.10.2020 had submitted in the form of annexure a detailed status of each client and also summarized the same in a tabular form. For ease of reference, the summary table is again attached as* ***Annexure 5(two sheets in same excel file)****. The detailed breakup for each client and each quarter is submitted in soft copy in a CD. We wish to draw your attention to the following facts:*

   i. *The SEBI OD had not done ageing of inactive clients. This omission on the part of OD resulted into incorrectly considering by OD that the funds received during the quarter and just before the end of the quarter, as clients not settled, whereas the fact is clients were promptly settled within 90 days, as per their preference and as per the regulatory requirement.*

ii. *SEBI OD has incorrectly inferred that Shares/funds of non-traceable clients as not settled, whereas we had informed clients several times to provide relevant details of valid bank/demat account number etc. Copies of courier receipts of such reminders sent to these clients were also submitted. The same are once again attached as* ***Annexure 5.1.*** *Demat audit report of the failed payout is also attached as* ***Annexure 5.2*** *in soft copy in CD. Such funds and securities were moved to a specially opened bank and demat account for this purpose. Details are attached as* ***Annexure5.3.***

iii. *Incidentally, as an example, we may mention that several banks and companies also face similar situation, where bank accounts or dividend/shares remains unclaimed with them for years.*

iv. *SEBI OD has incorrectly considered Sub-brokers, Authorized Persons, Remisery Brokerage accounts, and Mutual fund clients as equity client accounts and regarded them as not settled. The fact is these persons should not have been considered as equity clients. The detailed breakup is provided in the soft copy* ***Annexure 5****.Sample copy of Remiser- Subbroker ledger and MF Client ledgers are attached as* ***Annexure 5.4*** *in soft copy.*

v. *The SEBI OD has incorrectly considered clients under regulatory action/ ban orders as 'not settled'. We submit that as per respective regulatory orders passed by SEBI from time to time, these clients are barred from dealing in the securities market and if we settle these accounts, it would be in violation of those regulatory orders.*

vi. *Details of settled clients were also provided in detailed annexure. We are once again attaching herewith as* ***Annexure 5****. Copy of funds and securities statement sent after settlement to clients were also provided in soft copy where the alleged unsettled amount was more than 50000. The same are again attached in soft copy as* ***Annexure 5.5.***

<u>Observations/Finding</u>

6. W.r.t. allegation regarding non settlement of clients' securities and funds, I note that Noticee has denied the said allegation and has submitted that they had settled the accounts of the clients. Further, Noticee has stated that the accounts which were not settled by them pertain to the following categories of clients:
   - Mutual Fund clients
   - Accounts freezed by Regulators
   - Margin Trading Facilities(MTF) clients, NRI clients
   - Custodian Settled Clients

- Accounts opened during the same quarter
- Remissery accounts
- Proof of delivery failed, CDSL, NSDL stock

7. The summary table provided by Noticee w.r.t. settlement of clients are given below:-

	X		A		B		C		D		E		F	
Quarter Ended	**As per SEBI**		**Freezed by Regulators**		**MTF Client, NRI, Custodian Settle, A/c Opened during the Quarter not required to be settle**		**Mutual Fund Div and Remisery accounts**		**PO fail, CDSL DP, NSDL Stock etc.**		**Settled clients**		**Pending to be Settled**	
	Number of inactive clients	**Total**	**No. of clients**	**Total**	**No. of clients**	**Total**	**No. of clients**	**Total**	**No. of clients**	**Total**	**No. of clients**	**Total**	**No. of clients**	**Total**
Jun-17	2324	9,53,47,071.00	3	5,13,541.00	27	44,256.99	661	6,53,30,744.96	47	9,48,508.23	1586	2,85,10,022.04	0	-
Sep-17	1938	8,59,48,308.00	3	5,07,253.53	22	30,07,643.85	645	6,75,56,136.21	21	12,22,744.07	1247	1,36,54,530.42	0	-
Dec-17	1436	11,27,86,370.00	3	5,07,016.03	28	88,70,370.60	653	8,38,64,761.44	11	8,48,063.54	741	1,86,96,158.67	0	-
Mar-18	1068	1,29,98,038.00	6	7,90,955.47	30	9,04,617.13	58	21,94,721.69	8	5,45,340.55	966	85,62,403.52	0	-
Jun-18	1216	19,70,44,566.00	3	12,716.03	21	91,147.67	676	19,38,16,946.99	2	27,029.10	514	30,96,726.33	0	-
Sep-18	293	4,49,71,457.00	1	4,21,658.97	28	2,89,70,985.73	3	6,09,122.82	11	8,84,779.16	250	1,40,84,910.32	0	-
Total	8275	54,90,95,810.00	19	27,53,141.03	156	4,18,89,021.97	2696	41,33,72,434.11	100	44,76,464.65	5304	8,66,04,751.30	-	-

8. W.r.t. Noticee contention for not settling accounts of those accounts, which were frozen due to Regulatory Action, I note that Noticee has not provided any documents to justify its contention. Therefore, I am unable to accept the plea taken by Noticee.

9. Noticee has contended that the balances of Remisery Brokerage accounts/ Sub-Brokers/ Authorized persons and Mutual Fund clients have been incorrectly considered as not settled, since these clients should not be considered as equity clients. In this regard, I note that the balances of Sub-brokers/Remisery accounts need not be considered for settlement purpose, as these are not client accounts. Therefore, I accept the submission of the Noticee in this regard. W.r.t. Noticee's contention

regarding non settlement of Mutual fund clients, I note that as per SEBI circular dated December 03, 2009, all balances lying in mutual fund account or equity ledger need to be settled. In view of the same, I find that justification provided by Noticee is not tenable.

10. I note from the above table that w.r.t. MTF clients, NRI clients and Custodian settled accounts, Noticee has stated that these accounts are not required to be settled. As per Clause 12(g)(i) and 12(j) of Annexure to SEBI circular dated December 03, 2009, the provisions of Running Account facilities will not apply to clients availing margin trading facilities("**MTF"**) and institutional clients settling trades through custodians. In view of the same, I am inclined to accept the contention of Noticee w.r.t. not settling the accounts of MTF Client, NRI and Custodian clients. However, w.r.t. Noticee's contention regarding non-settlement of accounts, which were opened in the same quarter, I note that Noticee has not provided any supporting documents to show that the such accounts were opened in the same quarter. In view of the same, I am not inclined to accept this contention of Noticee.

11. I further note from the above table that Noticee has listed out number of clients under the column, "*PO fail, CDSL DP, NSDL Stock etc*." stating that for these clients who are not contactable /not traceable, they had made all the efforts to contact such clients and took all possible actions required to settle such clients. I note from the submission of the Noticee that efforts had been taken by them to settle the said inactive clients. Therefore, I am inclined to give benefit of doubt to Noticee in this regard.

12. W.r.t. Noticee's contention that accounts were actually settled, I note that in its submission, Noticee has provided Retention Statement of 228 clients who were having ledger balance of more than Rs. 50,000/-. I note that Noticee has not provided any documentary evidence to show that these Retention statements had been sent to the clients and balance funds and/ or securities were actually transferred to clients' account. In absence of such documentary evidence, I am not inclined to accept this contention of Noticee. Further, on perusal of the Retention Statements provided by Noticee, I note that in the field, "*Explanation regarding Retention of Funds and Securities", Noticee has considered Unencumbered Debit balance in client ledger (across segments/ exchanges after revising value of unsettled bills if any in case of trade day billing and margin amount if debited in client ledger)(150% of Debit Ledger Balance)*". However, I note that the limit of 150% Debit balance in client ledger is not

part of the format provided by NSE for settling the accounts of the clients. Therefore, I find that the aforesaid Retention Statements are not in order. In any case, Noticee has not provided any documentary evidence for the remaining instances of settled accounts as claimed by it. In view of the foregoing, I am not inclined to accept the aforesaid contention of Noticee.

13. In view of the same, I find that Noticee failed to settled the accounts of the clients in accordance with SEBI circular dated December 03, 2009 read with NSE circular ref. no. NSE/INSP/24849 dated October 29, 2013. Therefore, I find that Noticee has violated Clause 12 of Annexure to SEBI circular dated December 03, 2009 read with NSE circular ref. no. NSE/INSP/24849 dated October 29, 2013.

D. Not uploading of clients details with CKYC, KRA,UCC and non-segregation of Mandatory and Non-mandatory clause in KYC

Allegation in the SCN

1. *OD carried out inspection in various areas of Client Registration Process, covering Account opening process, Know Your Client (in short KYC) requirements, KYC Registration Agency (in short KRA) process, Beneficiary Ownership Requirement, Power of Attorney and Client master analysis for multiple bank accounts, Unique Client Code (in short UCC), PAN, contact details, etc. OD observed that Noticee had not uploaded details of certain clients to CKYC portal (details enclosed as Annexure E), had not complied with KRA requirement for certain clients (details enclosed as Annexure F), had not segregated mandatory and Non-Mandatory clauses in the part of KYC and had uploaded incorrect and incomplete details of certain clients to UCC database of the BSE (details enclosed as Annexure G). Thus, OD observed that Noticee allegedly violated Annexure A to SEBI circular SEBI/MIRSD/SE/CIR-19/2009 dated December 03, 2009, clause B of SEBI circular CIR/MIRSD/15/2011 dated August 02, 2011, clause 6 of SEBI circular CIR/MIRSD/66/2016 dated July 21, 2016 and clause 3 of SEBI circular MIRSD/CIR-5/2012 dated April 13, 2012.*

Reply of Noticee

Letter dated October 01, 2020

2. *As regards allegation at paragraph 7 of SCN that we had not uploaded details of certain clients to CKYC portal, had not complied with KRA requirement for certain*

clients, had not segregated mandatory and Non-mandatory clauses in the part of KYC and had uploaded incorrect and incomplete details of certain clients to UCC database of the BSE, for the reasons stated herein below, we deny these allegations. The fact is clause 6 of the SEBI circular CIR/MIRSD/66/2016 dated 21.07.2016 (also quoted in SCN) provides that in the first phase, KYC data is to be uploaded in respect of all individual accounts opened on or after 01.08.2016. Accordingly, we had done the CKYC compliance for all active clients opened on or after 1stAugust 2016 and had uploaded details of all such clients to CKYC portal. We are attaching Annexure-4.1 (please refer CD furnished by us along with this response) giving details of CKYC done of clients mentioned in 'Annexure E' to SCN. As regards the clients whose accounts were opened before August 2016 and were active after August 2016, we have completed around 84% CKYC and the balance is in process. Thus, there is no violation by us as alleged, in this regard.

3. *As regards allegation at paragraph 7 about our non-compliance with KRA requirement, we state that we have done the KRA compliance for our clients. We are attaching Annexure - 4.2 giving details of status of compliance with the KRA along with the screen shot taken from KRA website in support of our submission. As regards clients whose KRAs are pending despite our follow-up, we have frozen their accounts. Further, we have segregated the mandatory and Non Mandatory clauses in our KYC. Please find attached our KYC form -Annexure 4.3 in support of our submission that we had segregated mandatory and non-mandatory clauses in the part of KYC documents. The allegation that we had uploaded incorrect and incomplete details of certain clients to UCC database of the BSE is also not correct since the UCC is done as per the selection of clauses made by the client in KYC or modification for each exchange segment as selected by the client. Please find attached Annexure 4.4 (please refer CD furnished by us along with this response) giving explanation for each client code mentioned in the 'Annexure G' to the SCN. In view of our submissions in paragraphs 11 and 12 as above, the allegation that we have violated the provisions of Annexure A to SEBI circular SEBI/MIRSD/SE/CIR-19/2009 dated December 03, 2009, clause B of SEBI circular CIR/MIRSD/15/2011 dated August 02, 2011, clause 6 of SEBI circular CIR/MIRSD/66/2016 dated July 21, 2016 and clause 3 of SEBI circular MIRSD/CIR-5/2012 dated April 13, 2012 is not correct and the SCN deserves to be disposed of without any penalty upon us.*

Letter dated July 30, 2021

4. *With regard to KYC observations we humbly submit that the KYC compliance is a continuous process and we continue to comply with all the attributes of KYC compliance. We wish to state as under for each of the alleged violations.*
   i. ***CKYC observation**. We have complied for all the codes mentioned in the Annexure E of the SEBI SCN by uploading the CKYC or have freezed accounts where the same is pending. A detailed codewise breakup is attached as Annexure 6.1.*
   ii. ***KRA Requirement: -**There were 7 instances. We have complied for 5 and remaining 2 accounts are freezed. A detailed codewise breakup is attached as **Annexure 6.2.***
   iii. ***KYC Form observations:** We have always complied with KYC norms. Our KYC document clearly shows that the Non-Mandatory documents are mentioned as "Voluntary General Terms and Conditions"- Page No…..5 & i,ii of our KYC document .The Mandatory documents are mentioned as "Mandatory"-page No2 to 11 except pg no 5& i,ii…..of our KYC. The KYC Hard copy is attached as **Annexure 6.3** for your reference.*
   iv. ***Upload of Incorrect/ Incomplete data on UCC database of the exchange:-***

   We have uploaded email and Mobile Nos wherever available. More than 50% of the cases are pertaining to PMS or NRI where the same is settled through custodian or PIS account. We have taken declaration from others of having no email or mobile. Data uploaded to exchange UCC is matching with the back office data.

   *Where the email and mobile were present in multiple accounts we have removed all such emails and mobiles. The current data has only email and mobile for self and family members as per declaration of clients. The maximum cases are that of PMS clients where the email and mobile is that of the PMS intermediary under POA. The detailed breakup is attached in soft copy in a CD as **Annexure 6.4***

5. *The observation was not discussed or queried by the OD (inspection team) with us, else we would have offered our explanation at that time and the observation would not have appeared in the SCN.*

6. *Kindly refer all three sheets of the attached excel file in soft format. From the above submission it may be noted that there is no non-compliance.*

Observations/Findings

7. It has been alleged in the SCN that Noticee has not uploaded details of certain clients to CKYC portal. Noticee in its reply dated October 31, 2020, has submitted that as per SEBI circular dated July 21, 2016 in the first phase, KYC data needs to be uploaded in respect of all individual clients opened on or after August 01, 2016 and accordingly they had uploaded the details of all such clients to CKYC portal. Further, Noticee has stated that individual clients accounts whose accounts were opened before August 2016, and were still active after August 2016, they had completed around 84% CKYC and balance was in the process. Noticee vide its letter dated July 30, 2021 further submitted that they had complied with all the codes mentioned in the SCN by uploading the CKYC and for the frozen accounts, the CKYC was pending. I note that Noticee in its reply has annexed a code wise break up of its clients. On perusal of the same, I note that out of 10,462 clients, Noticee had not uploaded the details of 9,505 clients in CKYC portal initially but were shown to have been done subsequently. In view of the same, and based on Noticee's own admission, I find that Noticee failed to upload the details of clients on CKYC portal. Accordingly, I find that allegation levelled against Noticee that it has violated Clause 6 of SEBI CIR/MIRSD/66/2016 dated July 21, 2016 stands established.

8. W.r.t. allegation regarding uploading clients details in KRA, I note that Noticee in its replies has submitted that out of 7 clients, whose details were not uploaded in KRA, they had frozen the accounts of 2 clients as they were not responding despite repeated follow-up. For the remaining 5 clients, Noticee submitted that they had complied with KRA requirements subsequent to the inspection. Thus, from the submission of Noticee, I note that Noticee has accepted the allegation levelled against it. In view of Noticee's own admission, I find that Noticee has failed to upload the details of clients with KRA during the relevant time. Therefore, I find that allegation levelled against Noticee that it has violated Clause 3 of SEBI Circular ref. no. MIRSD/CIR-5/2012 dated April 13, 2012, stands established.

9. W.r.t. allegation regarding segregation of Mandatory and Non mandatory clause in part of KYC, I note that Noticee in its replies has submitted that they had segregated the mandatory and Non-mandatory clause in KYC forms and had demarcated about the same in KYC form. Further, Noticee has contended that their KYC documents clearly shows that Non Mandatory documents mentioned as "*Voluntary General Terms and Conditions*" and Mandatory documents as "Mandatory". In this regard, I note that as

per Clause 1 of Annexure A to SEBI Circular MIRSD/ SE /Cir-19/2009, dated December 03, 2009, circular, the stock broker has to register a client by entering into an agreement with them and for the said purpose, the stock broker has to make available a folder /book containing all the documents required for registration of a client. It is also stated in the said circular that the folder/book shall have an index page listing all the documents contained in it and indicating briefly significance of each document. I also note that 'Annexure-A' of aforesaid circular, *inter-alia*, specifies about mandatory documents, voluntary documents etc. From the material available on record, I note that KYC forms contains an index which mentions about the Mandatory documents and Voluntary documents along with its corresponding page numbers and brief significance of the each document. Further, I also note that mandatory documents and voluntary documents are also available in the KYC booklet and it has been printed that particular clause is "Voluntary clause or Mandatory Clause". Therefore, I am inclined to accept the argument given by Noticee in this regard.

10. In view of the above, I find that allegation levelled against Noticee that it failed to segregate "Mandatory Clause and Non Mandatory Clause" in KYC Forms in terms of Annexure A to SEBI Circular dated December 03, 2009, does not stand established.

11. W.r.t. allegation regarding uploading of incorrect and incomplete details of certain clients to UCC database, I note that in the SCN, the provision which has been quoted for the aforesaid violation is Clause B of SEBI circular CIR/MIRSD/15/2011 dated August 02, 2011. However, I note that the appropriate clause which will be applicable is Clause 2(B) of SEBI circular CIR/MIRSD/15/2011 dated August 02, 2011.

12. Noticee, in its replies, has denied the allegation levelled against them and stated that 50% of the cases w.r.t. mobile numbers and email ids are pertaining to PMS clients or NRI clients which are settled through custodian or PIS Account which I find acceptable. It has been further contended by Noticee that UCC was done as per the selection of clauses made by the clients in KYC or modification request made by the clients. Noticee has further contended that it had uploaded email IDs and mobile no. of clients wherever applicable and it had taken declaration from the clients having no email ids or mobile numbers. In addition to above, Noticee has also contended that they had removed multiple email IDs and mobile number in their records. I note from the documents provided by Noticee along with its submission that Noticee has now rectified the aforementioned irregularities w.r.t. mismatch in mobile numbers, email IDs

and removed multiple mobile numbers and email IDs. In view of the foregoing, I find that the contention of Noticee lacks merit.

13. Therefore, I find that except for PMS or NRI clients, Noticee has not uploaded correct/ complete data on UCC database on the exchange system for all the clients which were inspected. In view of the same, I find that the allegation levelled against Noticee that it has violated Clause 2(B) of SEBI Circular ref. no. CIR/MIRSD/15/2011 dated August 02, 2011 stands established.

E. Incorrect reporting of monthly and weekly uploading of clients data

Allegation in the SCN

1. *OD observed regarding monthly upload of client's securities balance for Enhanced* Supervision *to the NSE, with the supporting Depository Participant (in short DP) Holding statements & Holdings with the Clearing Member for one sample date i.e. December 31, 2018 that, Noticee had incorrectly reported monthly upload of clients' securities balance for Enhanced Supervision and the data towards weekly monitoring of clients' funds to the NSE for three clients (details enclosed as Annexure H), allegedly violating clause 3.2 & 7 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016*

Reply of Noticee

Letter dated October 01, 2020

2. *As regards the allegation at paragraph 8 of the SCN that we had incorrectly reported monthly upload of clients' securities balance for Enhanced Supervision and the data towards 'weekly' monitoring of clients' funds to the NSE for three (3) clients as detailed at 'Annexure H' of the SCN, we submit that the Annexure H to the SCN contains three (3) instances of the alleged incorrect reporting of the securities balances for the period ended 31.12.2018, but no data has been provided to us in the said Annexure H to SCN about the alleged incorrect reporting of 'weekly' monitoring of clients funds. Thus, the allegation is not supported with any data/statement about 'incorrect reporting of 'weekly' monitoring of clients funds' so as to enable us to furnish our response thereto and defend ourselves. The fact is, we had always done correct reporting to Exchanges in. Risk based supervision. We have been reporting correct figures/ data for monthly reporting of client funds. However, the incorrect reporting*

observed in respect of 3 clients mentioned at 'Annexure H' to the SCN was owing to a system error and without any malafide intention. We may state that even in respect of those 3 cases, when the correct figures/data is taken into account, there was no shortfall in clients' funds. This fact was also verified by the inspection Team that had satisfied itself that there was no shortfall in clients' funds. At Annexure 5 we are also enclosing our comments/ explanation in respect of three (3) clients mentioned in the SCN. As regards the System error, the same was brought to the notice of our vendors and the same was promptly rectified. From the foregoing, it may be observed that we have not violated any provision of clause 3.2 & 7 of Annexure to SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016and the SCN deserves to be disposed of without any penalty upon us.

Letter dated July 30, 2021

3. *Regarding monthly upload of data pertaining to securities and funds we have stated earlier and again reiterate as under.*
   i. *No data provided to us for weekly monitoring of funds. Annexure H of SEBI SCN provided instances of securities only and not funds, hence we can only provide explanation on the securities part.*
   ii. *Three instances of holding mismatch was due to system error which when brought to the notice of the software vendor was fixed by them. However we wish to specifically mention that there is no mis-utilisation of clients' securities and/or funds. Please refer Annexure 7 attached in this regard.*
4. *The observation was not discussed or queried by the OD (inspection team) with us, else we would have offered our explanation at that time and the observation would not have appeared in the SCN.*
5. *From the above it may be noted that there is no violation or non-compliance.*

Observations/Findings

6. It has been alleged that Noticee had incorrectly reported monthly upload of clients' securities balance for Enhanced Supervision and the data towards weekly monitoring of clients' funds to the NSE for three clients (details enclosed as Annexure H), thereby violating Clauses 7 and 3.2 of Annexure to Enhanced Supervision Circular and if the aforesaid allegation is established, Noticee is liable for penalty under Section 15A (b) of SEBI Act.

7. At this juncture, I find it pertinent to refer to the provision of clause 3.2 of Annexure to Enhanced Supervision Circular which is reproduced below:

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

A-Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained 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

8. I note that the aforesaid clause deals with client funds only and not client securities. Thus, I find that Clause 3.2 of Annexure to Enhanced Supervision Circular is not applicable to facts and circumstances involved in the aforementioned allegation.

9. Further, I note that Clause 7 of Annexure to Enhanced Supervision circular states as under:-

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

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.

10. Thus, on reading of the aforesaid provision, I note that the aforesaid provision merely deals with submission/ uploading of clients funds and securities data on the Stock Exchange system but is silent about submission/ uploading of incorrect data/ information. In this regard, I find it pertinent to refer to Clause 6.1.1.j of Annexure to Enhanced Supervision Circular which is given hereunder:
"6.1.1."Monitoring criteria for Stock Brokers:

……..

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

11. In the above facts and circumstances, I find that the applicable charging provision would be Clause 6.1.1.j of Annexure to Enhanced Supervision Circular. Hence, I find that Clause 7 of Annexure to Enhanced Supervision Circular is not applicable to facts and circumstances involved in the aforementioned allegation.

12. In view of the foregoing, I am inclined to drop the said allegation without going into its merits.

F. Terminal operated by other users

<u>Allegation in SCN</u>

1. *OD observed that the NSE carried out Branch inspection of Noticee on March 08, 2019 at two locations, namely:*
   - *<u>Location 1</u> 7, Purnima Building, Opposite Railway Station, Dada Patil Road, Thane - 400601*
   - *<u>Location</u>-2 105, Siddhivinayak building, 1st floor, Plotno.29/a, Sector, 19/c, Vashi.*

2. *OD observed that the terminal at the inspection location were not operated by the person as per NSE's records and that Noticee allegedly violated clause A(5) of regulation 9 of SEBI (Stock Broker) Regulations, 1992 read with exchange circular NSE/MEMB/3574 dated August 29, 2002, NSE/MEMB/3635 dated September 25, 2002 and NSE/MA/22732 dated February 13, 2013*

<u>Reply of Noticee</u>

<u>Letter dated October 01, 2020</u>

3. *As regards allegation at paragraph 9 of the SCN that the terminal at the 'inspection* locations' *i.e. Thane and Vashi were not operated by the person as per NSE's records, we wish to state that there was no adverse observation for Thane branch and the alleged instance mentioned by the inspection team pertains to our Vashi branch. In case, there is any allegation about Thane Branch, we request you to furnish us the same. As regards our Vashi branch, we submit that the said Vashi branch had/has no clientele activity. Further, we would like to mention that when the inspection team visited Vashi premises, a repair and maintenance work was taking place in the said premises. The person as per NSE's records had attended office during morning for few hours and had left for the day due to the maintenance work in the said premises, when the inspection team visited the office. For the same reasons, i.e. due to the*

maintenance work in progress, the compliance board was also kept aside. The same was put back on display immediately after the said maintenance work was over. User had shifted on the same day and CTCL data was also updated as repairs and maintenance work was on in the premises. We are enclosing copies of Employment certificate and details of payments made towards salaries etc. to the said person as per NSE's records at our Vashi branch as Annexure-6 and Annexure-7, respectively. Thus, we submit that we have not violated any provision of clause A (5) of regulation 9 of SEBI (Stock Broker) Regulations, 1992 read with Exchange circular NSE/MEMB/3574 dated August 29, 2002, NSE/MEMB/3635 dated September 25, 2002 and NSE/MA/22732 dated February 13, 2013 and the SCN deserves to be disposed of without any penalty upon us.

Letter dated July 30, 2021

4. *Regarding branch inspection we wish to state that the inspector visited two locations i.e. Thane* and *Vashi branch.*
5. *It may be noted that the SEBI SCN does not specify the location of the observations. However from the details of the observations made we presume the same are pertaining to our Vashi Branch. We wish submit as under.*
   i. *There is no clientele activity in our Vashi branch.*
   ii. *The users were present in the morning and had left during the day because of repair work in progress.*
6. *From the above it may be noted that there is no violation on our part.*

Observations/Findings

7. W.r.t. allegation regarding that terminal IDs were being operated by persons other than those registered with NSE, it has been mentioned in the SCN that Noticee has violated Clause A (5) of Code of Conduct as specified in Schedule II read with Regulation 9 of Stock Broker Regulations read with Exchange circular NSE/MEMB/3574 dated August 29, 2002, NSE/MEMB/3635 dated September 25, 2002 and NSE/MA/22732 dated February 13, 2013. However, I note that the appropriate clause which will be applicable is Clause A (5) of Code of Conduct as specified in Schedule II read with Regulation 9(f) of Stock Broker Regulations read with Exchange circular NSE/MEMB/3574 dated August 29, 2002, NSE/MEMB/3635 dated September 25, 2002 and NSE/MA/22732 dated February 13, 2013.

8. W.r.t. aforesaid allegations, I note that Noticee has accepted that at Vashi branch, some other person was operating the terminal, as the registered user had left early due to some renovation work was going on. Accordingly, I find that terminals were not operated by registered users as per NSE records. Accordingly, I find that Noticee has violated Clause A (5) of Code of Conduct as specified in Schedule II read with Regulation 9(f) of Broker Regulations read with NSE circulars NSE/MEMB/3574 dated August 29, 2002, NSE/MEMB/3635 dated September 25, 2002 and NSE/MA/22732 dated February 13, 2013.

G. <u>Mismatch in BO address as per KRA records</u>

<u>Allegation in the SCN</u>

1. *OD observed in areas pertaining to DP operations, as verified by CDSL, that permanent address in Central Depository Accounting System for three Beneficial Owner Identification Numbers - 570072, 572918 and 229278, was different from what was recorded with KYC Registration Agency, and also that certain PANs were not in verified status (details enclosed as* ***Annexure I****). OD observed that Noticee allegedly violated clause 1 of SEBI circular MIRSD/CIR-26/2011 dated December 23, 2011.*

<u>Reply of Noticee</u>

<u>Letter dated October 01, 2020</u>

2. *With* regard *to allegation in paragraph 10 of SCN that permanent address in Central Depository System for three Beneficial Owner Identification Numbers- 570072, 572918 and 229278 was different from what was recorded with KYC Registration Agency, and also that certain PANs stated in Annexure I to SCN, were not in verified status, we submit that out of 3 accounts, there is no mismatch of permanent address in CDAS record with that of KRA for 2 accounts i.e. BO IDs 572918 and 229278. In support of the same, we are attaching the screen shots of CDAS BO Module, CVL-KRA and CDAS Non- Financial Trx, in sequence for ready reference as Annexure 8. As regards the third account i.e.BO ID 1201860000570072, we confirm that the same was promptly modified on 05.02.2019 as per the permanent address appearing in KRA. As regards observation that KYC records of few PANs were not in 'verified status' / are in hold status in KRA System, we submit that we had communicated deficiencies in KYC to those Beneficiary Owners ('B0s') and had also frozen their accounts. As per laid down procedure, in case of non-compliance of any stipulated documentation*

/requirement by a BO, we issue a 30-day's notice for compliance and if rectification/compliance is not done within the said period, we close their accounts. In the interim period, since such accounts remain in frozen state until full compliance is made, it is evident that we had closely monitored those accounts. Only upon fulfilment of all documentations/ compliances, we allow BOs to transact through us. From the above, it is clear that we have not violated any provision of clause 1 of SEBI circular MIRSD/CIR-26/2011 dated December 23, 2011 and the SCN deserves to be disposed of without any penalty upon us.

<u>Letter dated July 30, 2021</u>

3. *Regarding DP observation we wish to clarify as under.*
    i. *Out of 3, there was no mismatch of 2 BOs and the third was promptly updated on 05.02.2019 as per KRA.*
    ii. *We have always frozen Non- verified PAN account and informed clients.*
    iii. *We inform clients in case of deficiency in compliance and ask them to comply else we issue notice and close the account.*
4. *Please find attached **Annexure 8** giving status of address matching with KRA and **Annexure 8.1** showing PAN in verified status.*
5. *From the above it may be noted we have not done any violation or non- compliance.*

<u>Observations/ Findings</u>:-

6. W.r.t. allegation regarding difference in permanent address in Central Depository Accounting System for three beneficial owners, I note that the SCN dated August 11, 2020, which was issued to Noticee had mentioned that Noticee was liable for monetary penalty under the provisions of Section 15HB of the SEBI Act for the alleged violations of clause 1 of SEBI circular MIRSD/CIR-26/2011 dated December 23, 2011, as a DP. In this regard, I find that since the allegation pertains to DP operation, the same will be governed under the Depositories Act, 1996 and the relevant penal provision that will be applicable in this regard would be Section 19G of Depositories Act, 1996. The text of Section 19G Depositories Act, 1996 is reproduced as under:

    ***Section19G:**- Penalty for contravention where no separate penalty has been provided. Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws 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*.

7. Considering that the penal provision, i.e., Section 15HB of SEBI Act, which has been mentioned in the SCN in regard to the aforesaid allegation is incorrect and would not apply in respect of in the facts and circumstances of the matter as enumerated above, I am not inclined to proceed further in regard to the aforesaid allegation.

Issue No. II: Do the violations, if any, attract monetary penalty under Section 23D of SCRA, Section 15A (b) of SEBI Act and Section 15HB of SEBI Act

11. It has been established in the foregoing paragraphs that the Noticee has violated the following provisions:-

    i. Section 23D of SCRA read with Clause 1 of Transactions Regulations Circular and clause 3 of Annexure to Enhanced Supervision Circular ;
    ii. Clause 12 of Annexure to SEBI circular dated December 03, 2009 read with NSE circular NSE/INSP/24849 dated October 29, 2013 ;
    iii. Clause 6 of SEBI Circular ref.no. SEBI/CIR/MIRSD/66/2016 dated July 21, 2016;
    iv. Clause 3 of SEBI Circular ref. no. MIRSD/CIR-5/2012 dated April 13, 2012;
    v. Clause 2(B) of SEBI circular no. CIR/MIRSD/15/2011 dated August 02, 2011; and
    vi. Clause A(5) of Regulation 9(f) of Stock Broker Regulations read with NSE circulars NSE/MEMB/3574 dated August 29, 2002, NSE/MEMB/3635 dated September 25, 2002 and NSE/MA/22732 dated February 13, 2013

12. Noticee, in its submissions has submitted that every little deficiency or technical violation noticed during the course of the inspection is not culpable and does not call for penalty. To support its contention, Noticee has quoted the judgement of Hon'ble Securities Appellate Tribunal ("**SAT"**) in the matters of UPSE Securities Ltd. v/s SEBI (Appeal No. 109 of 2011), DSE Financial Services Ltd. v/s SEBI (Appeal No.153 of 2012), Reliance Industries Limited v/s. SEBI (SAT appeal no, 39/2002) and Hon'ble Supreme Court in the Hindustan Steel Case (1970)1 SCR 753; Air 1970 SC 2563) for non-imposition of penalty. However, I note that the facts of the above cases are different from the facts of the present proceedings and therefore, not relevant.

13. 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 held that: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of*

civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''

14. Therefore, in view of the violations as established and placing reliance on the aforesaid judgment, I find that monetary penalty would be attracted under:

    a. Section 23D of SCRA for the violations of Section 23D of SCRA read with Clause 1 of Transactions Regulations Circular and clause 3 of Annexure to Enhanced Supervision Circular and
    b. Section 15HB of SEBI Act for the violations of Clause 12 of Annexure to SEBI circular dated December 03, 2009 read with NSE circular NSE/INSP/24849 dated October 29, 2013, Clause 6 of SEBI Circular ref.no. SEBI/CIR/MIRSD/66/2016 dated July 21, 2016, Clause 3 of SEBI Circular ref. no. MIRSD/CIR-5/2012 dated April 13, 2012, Clause 2(B) of SEBI circular no. CIR/MIRSD/15/2011 dated August 02, 2011 and Clause A(5) of Regulation 9(f) of Stock Broker Regulations read with NSE circulars NSE/MEMB/3574 dated August 29, 2002, NSE/MEMB/3635 dated September 25, 2002 and NSE/MA/22732 dated February 13, 2013, by Noticee.

15. The texts of Section 23D of SCRA and Section 15HB of SEBI Act are reproduced as under:

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

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

<u>Issue No. III: If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?</u>

16. While determining the quantum of penalty under Section 23D of SCRA and Section 15HB of the SEBI Act, factors stipulated in Section 23J of SCRA and Section 15J of the SEBI Act have to be given due regard. The aforesaid provisions are reproduced hereunder:

Factors to be taken into account by adjudicating officer under SCRA

23J. *While adjudging the quantum of penalty under Section 23-I, the adjudicating officer shall have due regard to the following factors, namely:—*

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

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

(c) the repetitive nature of the default.

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.

Factors to be taken into account by the adjudicating officer under SEBI Act

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

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

17. 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 is not possible to ascertain the exact monetary loss to the investors /clients on account of default by Noticee. As regards the repetitive nature of the default, I do not find that the Inspection having brought on record any regulatory action taken by SEBI in past against Noticee for same violations as those observed in the instant matter. I also observe that there are no investor complaints on record, arising out of failure on the part of Noticee. However, I cannot ignore the fact that as a SEBI registered Intermediary, Noticee was under a statutory obligation to abide by the provisions of the SCRA, SEBI Act, Rules and Regulations and Circulars/directions issued thereunder, which it failed to do. Such disregard for the provisions of law governing the functioning of such intermediaries, calls for an appropriate penalty which should act as a deterrent.

ORDER

18. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in Section 23J of SCRA and Section 15J of SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 23-I of the SCRA and Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the following penalty on Noticee viz. Sykes and Ray Equities (I) Ltd.:-

Sr. No.	**Penalty**	**Under the provisions of**
1	Rs. 3,50,000/-(Rupees Four Lakhs only)	Section 23 D of SCRA
2	Rs. 2,00,000/-(Rupees Two lakhs only)	Section 15HB of SEBI Act
Total	**Rs. 5,50,000/-(Rupees Five Lakh Fifty thousand only)**	

I am of the view that the said penalty is commensurate with the violations committed by Noticee.

19. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

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

20. Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – III of SEBI. Noticee shall provide the following details while forwarding DD/ payment information:

   i. Name and PAN of the entity (Noticee)
   ii. Name of the case / matter
   iii. Purpose of Payment – Payment of penalty under AO proceedings
   iv. Bank Name and Account Number
   v. Transaction Number

21. In the event of failure to pay the said amount of penalty by Noticee within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticee under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties of Noticee.

22. In terms of the provisions of Rule 6 Adjudication Rules, copy of this order is being sent to Noticee viz. M/s. Sykes and Ray Equities (I) Ltd. and also to SEBI.

Date: May 27, 2022
Place: Mumbai

SOMA MAJUMDER
Adjudicating Officer