

**SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER**

UNDER SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

In respect of:

Motisons Commodities Private Limited

SEBI Registration No. : INZ000086935

PAN : AADCM7184M

1. Motisons Commodities Private Limited (*hereinafter also referred as ‘the Noticee’*) is a member in the commodity derivative segment with the Multi Commodity Exchange of India Limited (MCX) and the National Commodity and Derivative Exchange Limited (NCDEX) and is registered with SEBI as a stock broker having registration number INZ000086935.
2. Pursuant to a joint inspection by SEBI MCX and NCDEX for the period 01.04.2021 to 31.08.2022, SEBI initiated two proceedings against the Noticee. One, the Adjudication Proceedings under section 15I of the SEBI Act, and the other, the proceedings under section 12(3) of the SEBI Act read with Intermediaries Regulations. Same officer was appointed by SEBI for adjudication under section 15I and for conducting proceedings in accordance with Intermediaries Regulations. The officer so appointed by SEBI passed an Order dated 31.12.2024 levying a penalty of Rupees Four (4) Lakhs on the Noticee and on the same date also submitted a Report (“**Report**”) to SEBI in accordance with the provisions of the Intermediaries Regulations.
3. The instant proceedings have commenced pursuant to the above Report and consequent Show Cause Notice (“**SCN**”) dated 06.01.2025 as required under the Intermediaries Regulations. It is noted that the charge against the Noticee in the instant proceedings are limited to two alleged violations by the Noticee i.e.

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- (a) Firstly, the Noticee while calculating the networth for 31.03.2022 had not deducted the advance of Rs.5.53 crores which was overdue for more than three months and;
 - (b) Secondly, the Noticee has engaged in a business other than that of securities market by giving loans and advances to certain parties to the tune of Rs.5.53 crores as on 31.03.2022.
- 4. While the above two allegations have been finally determined and adjudicated by the Adjudicating Officer in his Order dated 31.12.2024, the same officer, acting as Designated Authority (DA) in his Report of the same date, has made a *prima facie* finding that the Noticee violated Clause A (5) of Schedule II read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992, Explanation 1 to Schedule VI of the SEBI (Stock Brokers) Regulations, 1992 read with NCDEX Circular NCDEX/ COMPLIANCE 16/2016/239 dated September 27, 2016 (Clause 6.1.1 (j) of SEBI Circular SEBI/HO/MIRSD/ MIRSD2/CIR/P/2016/95 dated September 26, 2016 and Rule 8(3)(f) of the Securities Contract (Regulation) Rules, 1957(SCRR).
- 5. The Noticee has filed his reply to the SCN vide its letter dated 29.01.2025 and has also availed the opportunity of personal hearing on 07.03.2025, when Dr. Keyur Shah, Advocate and Mr.Meit Shah the Learned Authorised Representatives for the Noticee attended the hearing and reiterated the submissions made vide reply dated 29.01.2025. The main contention of the Noticee is that for same violations, the Adjudicating Officer has already imposed the penalty which has already been paid by the Noticee. Further, its membership with NCDEX has been terminated on 09.06.2023 pursuant to approval of its application for surrender of membership submitted on 06.02.2023 and its surrender application with MCX is pending for decision by that stock exchange. It has emphasized that it does not wish to continue its membership. It is in the process of complying with the requirements as required by MCX for the surrender of its membership and once the surrender application is accepted by MCX, the Noticee will no longer hold any membership with both the stock exchanges.
- 6. As regards the allegation of not deducting advances given of Rs. 5.53 crores which was overdue for more than 3 months in the calculation of net worth as on 31.03.2022, the

Noticee has submitted the balance sheet as on 31.03.2022 wherein they have included each and every detail and it is now in compliance with minimum required net worth for trading member i.e. Rupees one (1) crore. As regards the second part of allegation, the Noticee has submitted that the loans / advances given to four entities were out of the surplus funds available with the Noticee. The said loan given to 4 entities did not possess risk to their business as “Commodity Broker”. There is no allegation of mis-utilization of client funds. The said loan transaction did not affect the client’s dealings with the Noticee acting as commodities broker. Relying upon an Interpretive Letter dated 14.02.2022 issued by SEBI under the SEBI (Informal) Guidance Scheme, 2003 in the matter of HDFC Securities Limited wherein it has submitted that SEBI has already accepted interpretation of Rule 8(3)(f) of SCRR is that the stock brokers are not deemed to be engaged in business other than securities market as far as they do not incur any personal financial liability.

7. The Noticee has also made legal arguments that the validity of the NSE Circular dated 07.01.2022 bearing reference No. NSE/COMP/50957 is under challenge before Hon’ble Bombay High Court in Writ Petition (L) No. 32739 of 2023 and said Writ Petition is admitted on 24.07.2024. The outcome of said Writ Petition will have direct bearing on the subject matter of the present proceedings. Further, on similar subject matter, the Hon’ble Securities Appellate Tribunal in the matter of *Arihant Capital Markets Ltd. Vs. National Stock Exchange* (Appeal No. 431 of 2023) has vide its Order¹ stated that the “*Learned advocate for NSE submits that the circular is under challenge before the Hon’ble Bombay High Court. Matter is adjourned sine die.*”
8. Noticee has relied upon following orders of SEBI and Hon’ble SAT on the same issue:
 - (a) In Adjudication Order passed in the matter of *Geojit BNP Paribas Financial Services Limited*² wherein it is stated, *inter alia*, that for any activity to be classified as business activity there should be several activities with several clientele. There is no restriction on the inter corporate loans given by SEBI registered intermediary. An inter corporate loan given by a stock broker out of the surplus funds, which

¹ Dated 10.09.2024

² Dated 31.10.2017

exceed the minimum networth requirement applicable to stock broker as well as the working capital requirement for its business, as a temporary financial accommodation, would not pose a risk to the business of the stock broker and affect the clients dealing with them.

- (b) Hon'ble SAT Order³ in the matter of *Magnum Equity Broking Limited vs. NSE* (Appeal No.461 of 2022) wherein SAT has stated *inter alia* that investment of surplus funds generated as a consequence of securities business, with an NBFC registered with RBI cannot lead to an inference that the Appellant is engaged as a principal in business other than that of securities involving personal financial liability.
- (c) SEBI, after enquiry in *Eureka Stock & Share Broking Limited*, *Phillip Capital (India) Private Limited*, *Bonanza Portfolio Limited* and *IIFL Securities Limited* has disposed of the proceedings against such broker-noticees i.e. without issuing any direction against them after taking into consideration that the adjudicating officer has already levied penalty for similar violations.
- (d) Noticee has also relied upon orders of Hon'ble SAT which has set aside the SEBI orders viz *Religare Securities Ltd. vs SEBI*⁴, *UPSE Securities Ltd. vs SEBI*⁵, *DSE Financial Services Ltd. vs SEBI*⁶ to contend that purpose of inspection is not to punish but to take corrective actions. The Noticee has requested to consider their case on similar lines and exonerate it from the charges levelled against it.

9. I have carefully considered the Report of the DA, replies and submissions of the Noticee. The Noticee has stated that vide its letter dated 06.02.2023 it has submitted its application for surrender of membership with NCDEX and MCX. NCDEX vide email dated 09.06.2023 has informed the Noticee that the application for surrender of membership has been approved by NCDEX. The application for surrender of membership to MCX is still under process. It is, however, noted that there is no record of application for Final Surrender of Registration from the Noticee in SEBI's record and that the status of the Noticee is still shown as "Registered" as stock broker.

³ Dated 29.11.2023

⁴ Dated 16.06.2011 (Appeal No. 23 of 2011)

⁵ Dated 25.07.2011 (Appeal No. 109 of 2011)

⁶ Dated 11.09.2012 (Appeal No. 153 of 2012)

10. Another technical argument of the Noticee is that the purpose of carrying out inspection is not punitive and not every irregularity or deficiency noticed during the course of inspection calls for initiation of penalty proceedings. In this regard, I note that the Hon'ble SAT in *UPSE Securities Limited* (supra) observed that for serious lapses, it would always be open to SEBI to take penal action in accordance with law. In the matter of *DSE Financial Services* (supra), the Order of SEBI was set aside because the violations were found to be technical in nature. Further, in *Religare Securities Limited* (supra), the Hon'ble SAT observed as follows:

“This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent.”

11. In view of the above observations of Hon'ble SAT, I find that the SCN issued to Noticee cannot be held to be bad in law.

12. Coming to the merit of the case, I note that both allegations are interconnected and intertwined as the same facts have been alleged for both the allegations. It is admitted position that the Noticee had given loans and advances to four (4) entities to the tune of Rs.5.53 crores as on 31.03.2022 and it had not deducted said advances of Rs.5.53 crores in its networth as on 31.03.2022 which was overdue for more than three months.

13. The scope of language and approach of enforcement of said Rule 8(1)(f) and Rule 8(3)(f) of the SCRR and issue of pendency of Writ Petition (L) No. 32739 of 2023 before Hon'ble Bombay High Court, have already been dealt with in order dated 31.12.2024 in the matter of *Abhipra Capital Limited*. The findings in this respect have attained finality by an order dated 17.01.2025 passed in an appeal before Hon'ble SAT (Appeal No.016 of 2025) against the said order dated 31.12.2024. The said finding equally apply to this case also as the contentions on law in this case are the same as in the case of *Abhipra Capital Limited*. I do not wish to burden this order with same

findings again and adopt the same legal position for the purpose of examination of legal arguments. I also find that the requirements of Rule 8(3)(f) equally apply to a commodities broker as they apply to an equity segment stock broker. Whether the loan transaction affect the client's dealings with the Noticee acting as commodities broker is immaterial as the Rules provides for complete prohibition except as permitted by the Rule 8(3)(f) itself read with clarifications issued by SEBI.

14. As regards enforcement of said Rule 8(3)(f) , it is pertinent to mention that the said Rule as its enacted envisages complete ineligibility of a member to continue as such if it contravenes those eligibility requirements⁷.

15. However, considering the divergent approaches in enforcement as mentioned in the aforesaid order dated 31.12.2024 and further modified by Hon'ble SAT in *Abhipra Capital Limited (Supra)* the consistency need to be followed in similar case. I am also mindful of observations of Hon'ble SAT in the matter of *Reliance Industries Limited v. SEBI*⁸ wherein, in the context of technical defaults, it held that: ".. In such circumstances, the role of a regulator is to rehabilitate and bring to an end litigation." Further, SEBI is also mindful of getting entrapped in multiplicity of processes when parties drag the proceedings. Speaking through its Ex whole time member (Ms. Madhabi Puri Buch) in *Phillip Commodities India Pvt. Ltd*⁹ it has felt that multiplicity of orders in the same proceeding would clog-up the quasi-judicial and appellate forum with unwarranted litigations. In my view, same principles do apply while exercising the choice of several actions for same violation. Although SEBI has power to take multiple actions, if facts and circumstances of a case so demand, but this power may not be exercised as routine to increase the numbers. These aspects, in my view, could be taken into account while initiating multiple actions in such cases after taking into account actions already taken in similar cases.

⁷ *Madras Stock Exchange v. S. S. R. Rajkumar* decided on 25.02.2003. Hon'ble Supreme Court in the matter of Premium Global Securities Pvt. Ltd decided on December 09, 2015

⁸ Decided on 31 August, 2004

⁹ Order No. WTM/MPB/EFD-1-DRA-II/17/2018 passed on June 06,2018

16. I have perused the orders relied upon by the Noticee with regard to its claim that it should also be exonerated on the same lines as in cases cited by it. I note that although the charge of violation of Rule 8(3)(f) of SCRR was one such charge (in the case of *Phillip Capital (India) Private Limited* and *IIFL Securities Limited*), it is seen that the DA in the report itself stated that this charge could not be established which was accordingly accepted by the quasi-judicial authority. Besides, there is no dearth of orders wherein the competent authority has taken action against the entities in spite of penalty being imposed on the entities by the adjudicating officer *e.g. Krisha Incap Services Pvt. Ltd*¹⁰, *Evermore Share Broking Private Limited*¹¹.

17. In this case, it is noted that the loans and advances given by the Noticees were clearly unconnected with the securities business of the Noticees as a stock broker. There is no dispute that the principal business and incidental business of the Noticee remains the securities/commodities derivatives and SEBI has also not treated its unconnected lending activity as its '*principal business*'. Also, the Noticee has not deducted advances which are overdue for more than 3 months in calculation of net worth dated 31.03.2022. The claims of the Noticee on merits also fail as the Rule completely disallow fund based activities of lending and borrowing except as permitted by SEBI circulars in that regard. Whether the fund have been lent out of surplus or not, whether it actually creates risk or not is immaterial for application of said rule 8(3) (f) of the SCRR.

18. I note that in, similar matters, different actions have been initiated and different actions have been taken in the past. Few examples are as under: -

Details of other orders

Name of the Broker	Type of proceeding SEBI/NSE	Amount of Loans	Nature of Order
Geojit BNP Paribas Financial Services (given to subsidiary company)	Adjudication Order dated 31.10.2017	71.94 crore	No penalty imposed.
Inventure Growth and Securities ltd.	WTM Order dated 14.11.2022	Rs.8.76 crore	Strongly warn noticee and advise to ensure strict

¹⁰ Order dated 02.12.2024

¹¹ Order dated 23.10.2024

(given to subsidiaries)			compliance with Rules in future
Magnum Equity Broking Ltd. (investment with NBFC)	NSE Order dated 30.05.2022	79.75 crore	NSE imposed penalty of Rs.7.5 lakhs. SAT quashed the NSE order.
Keshav Securities Pvt.Ltd. (loan given to sister concern and relatives)	Order by Executive Director SEBI dated 19.04.2023	Rs.58.03 crore.	DA recommended censure. However, SEBI suspended the certificate of registration of the Noticee for a period of 2 months.
Abhipra Capital Limited (NBFC and others)	Order by Quasi - Judicial Authority SEBI	Rs.12.53 crore	Prohibited from taking up any new clients as a stock broker on any segment of stock exchanges for a period of one month. SAT reduced the prohibition for a period 31.12.2024 to 17.01.2025.

19. As regards the approach of enforcement in similar cases and divergent actions taken as listed in the above order dated 31.12.2024 in *Abhipra Capital Limited (Supra)* , wherein the DA of SEBI made unique recommendation that the stock broker be prohibited from taking up any new assignment or contract or launching a new scheme for a period of one month but in the facts and circumstances of that case, the stock broker was prohibited from taking up any new clients as a stock broker on any segment of stock exchanges for a period of one month. However, in the appeal preferred by said stock broker Hon’ble SAT (Appeal No.016 of 2025), while upholding the findings recorded in the impugned order dated 31.12.2024, vide its order dated 17.01.2025 reduced the prohibition with following observations: -

“7. In view of above and the submissions made by the learned Advocate for the appellant there being no earlier incident of appellant’s involvement in similar violation, in our view, ends of justice would be met by limiting the prohibition till today. Ordered accordingly.

8. *The appeal stands disposed of while upholding the findings recorded hereinabove in the impugned order, in our view the period of prohibition undergone till today shall meet ends of justice.*”

20. In this case also the same DA has recommended that Noticee viz; Motisons Commodities Private Limited (SEBI Registration No. INZ000086935) be prohibited from taking up any new assignment or contract or launching a new scheme for a period of one month. To my mind, this recommendation is futile as it does not apply to a stock broker who does not launch schemes like pooled investment vehicles. The choice in list provided in Regulation 26 of the Intermediaries Regulations has to be applied keeping in mind the text and context both and not as a tick box approach. I, therefore, do not agree with such unprecedented recommendation.

21. Considering the consistency and proportionality as paramount considerations for any enforcement action, I note that, in this case, the loan amount is far less than any of the above listed cases where no punishment has been given or where punishment has been given. Compared to other cases, the amount of loan given in the instant case comes a bit near to the amount in the matter of *Inventure Growth and Securities Ltd.* but in that case loan was given to subsidiaries but in the instant case to independent entities. As regard, entities who were given loans and outstanding loans, the case comes near to *Abhipra Capital Limited (Supra)* case wherein the loan was given to 14 independent and unconnected entities. In that case, the outstanding amount as on the 28.10.2024 was Rs 4,03,80,829 which is much closer to the outstanding loan amount in this case. Further, in *Abhipra Capital Limited (Supra)* NSE vide its order dated 25.09.2023 had found the member in violation of the Rule 8(3)(f) of SCRR and had levied a penalty of Rs. 5 lakhs and had also directed the Noticee to recover the loans and advances within 3 months from the date of the order. In the instant case, Adjudicating Officer of SEBI has imposed a penalty of Four (4) Lakhs rupees on the Noticee which it has paid. However, the loans as granted by it still remain outstanding.

22. Therefore, while applying the principle of consistency and proportionality and also keeping in sight the order of Hon'ble SAT in the matter of *Abhipra Capital Ltd.* (supra) I am of the view that the commensurate regulatory action is warranted in the facts and circumstances of this case.
23. In view of foregoing, I, in exercise of the powers conferred upon me under Section 12(3) read with Section 19 of the SEBI Act, 1992 read with Regulation 26 and 27 of the SEBI (Intermediaries) Regulations, 2008 hereby prohibit the Noticee viz Motisons Commodities Private Limited (SEBI Registration No. INZ000086935) from taking up any new clients as a stock broker with its registration number INZ000086935 on any segment of the stock exchanges (MCX/NCDEX) for a period of fifteen (15) days from the date of this order.
24. While parting with this order, I would also urge SEBI to advise the concerned stock exchanges to ensure corrective measures to impress upon the Noticee to call back all loans and advances that are outstanding as on date. Also, if surrender of membership is accepted by the said stock exchanges as claimed by the Noticee, consequences of its SEBI registration may be examined separately by SEBI in accordance with law.
25. This order shall come into force with immediate effect.
26. A copy of this order shall be served on the Noticee and the recognized stock exchanges.

Date: May 14, 2025
Place: Mumbai

SANTOSH SHUKLA
QUASI JUDICIAL AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA

Order in respect of Motisons Commodities Private Limited