BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/GN/2024-25/30654-30655]

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) RULES, 1995.

In respect of:

Noticee No.	**Name of the Noticee**	**PAN of the Noticee**
1	Nippon Life India Asset Management Limited	AAACR2668G
2	Nippon Life India Trustee Limited	AAACR2646C

In the matter of

Practice of Charging TER to AMC books.

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted a thematic examination of Asset Management Companies (hereinafter referred to as **AMCs**) to examine the practice of charging scheme expenses to AMC books. In this regard scheme of Nippon Life India Asset Management Limited (hereinafter referred to as **Noticee 1**) were examined and alleged non-compliance of SEBI circular was observed, further during examination, alleged non-compliance by Nippon Life India trustee Limited (hereinafter referred to as **Noticee 2**) (Noticee 1 and Noticee 2 hereinafter collectively referred to as **Noticees**) with Securities and Exchange Board of India (Mutual Fund) Regulation, 1996 (hereinafter referred to as **Mutual Fund regulations**) were observed.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned has been appointed as the Adjudicating Officer vide Order dated February 28, 2024 under Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") to enquire into and adjudge under the provisions of Section 15E of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act**) for the

violations alleged to have been committed by the Noticee 1 and under Section 15HB of the SEBI Act for the violations alleged to have been committed by the Noticee 2.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice (hereinafter referred to as **"SCN"**) dated March 22, 2024 was issued to the Noticees under rule 4(1) of the SEBI Rules to show cause as to why an inquiry should not be held against them in terms of Rule 4 of SEBI Rules read with Section 15-I of SEBI Act and penalty, if any, be not imposed on Noticee 1 under Section 15E of the SEBI Act and on Noticee 2 under Section 15HB of the SEBI Act.

4. During examination it was observed from the TER structure of the Noticee 1 that, in 5 ETFs Noticee 1 has charged less expense to the schemes as against actual expense incurred by the schemes. Therefore, it is alleged that the Noticee 1 by bearing excess expenses of the scheme has allegedly violated the provisions of Clause A (1) of SEBI Circular dated October 22, 2018.

5. Further, it is alleged that Noticee 2 by not ensuring the compliance with aforesaid circulars by Noticee 1 have allegedly violated Regulation 18(9) read with regulation 77 of SEBI (Mutual Funds) Regulations, 1996.

6. The SCN was issued at the last known address of Noticees through Speed Post Acknowledgment Due (SPAD) which was delivered. SCN was also sent through Digitally Signed E-mail dated March 26, 2024 which was delivered and the delivery of the SCN is on record. Vide email dated April 16, 2024 Noticees submitted the reply dated April 16, 2024, which is summarized below-

   (i) *Noticees submitted that Regulation 52(7) of the Mutual Fund Regulation, 1996 itself provides for the AMC to absorb scheme related expenses in the event of breach of the ceiling rate of the permissible TER as per Regulation 52(6) or 52(6A). Therefore, it is abundantly clear that the ceiling rate of TER is not an absolute limit and the Mutual Fund can breach the limit but in that case, the expenses has to be borne by the AMC. Put differently, there is no express and absolute bar on the AMC bearing scheme related expenses.*

(ii) Noticees submitted that Regulation 52 (5) of the Mutual Fund Regulations,1996 even provides for excess expense which fall outside the ambit of Regulation 52 (2) or Regulation 52 (4) to be borne by the AMC which again points out that AMC is allowed to incur expenses and such bearing of expenses by AMC is not a matter of prohibition. The said provisions provide for absorption of expenses by the AMC and hence the regulatory framework is not of prohibiting absorption of expenses by the AMC and therefore, no adverse inference regarding the same ought to be arrived at qua the Noticees.

(iii) Noticees submitted that TER Circular can be considered to supplant the provisions of the Mutual Fund Regulations, 1996 rather than supplementing or adding anything further in the provisions.

(iv) Noticees submitted that the SEBI itself, through the Proviso Circular inserted a proviso to Clause A1 of the TER Circular which means that the provision in the TER Circular is not absolute but is subject to the proviso added by the Proviso Circular.

(v) Noticees submitted that Regulations 52 (5) and 52 (7) of the Mutual Fund Regulations,1996 and the Proviso Circular, makes it clear that the AMC is at liberty to charge certain expenses of particular nature and under certain circumstances to the books of the AMC. Therefore, in view of the aforementioned, act of Noticees charging the expenses to its book instead of the Mutual Fund Schemes could by no stretch of imagination be viewed as a 'restricted activity' and therefore it ought not to fall within the ambit of a violation as contemplated under Section 15-E of the SEBI Act,1992.

(vi) Noticees submitted that there is no bar on the AMC to book scheme related expenses to its books as the proviso circular and the provisions of the Mutual Fund Regulation actually and effectively provides for exception to the rule that scheme related expenses have to be booked from the AUM of that particular scheme.

(vii) Noticees referred to the order of the Ld. Adjudicating Officer in the matter of DSP Investment Managers Private Limited and submitted that the present proceedings initiated against the Noticee ought to be abated as being infructuous.

(viii) *Noticees submitted that the idea behind the TER Circular is to curb malpractices in the Mutual Fund Industry i.e. to curb mis-selling and market abuse in the matter of distribution of units to investors and trail commission. The Paragraph A.1 of the TER Circular is to bring transparency in expenses, reduce portfolio churning and mi-selling in mutual fund schemes.*

(ix) *Noticees submitted that the object of the Paragraph A.1 is not to ensure that the expenses are paid 'only' from the scheme, but that the expenses are paid 'only' within the regulatory framework and within the regulatory limits. Therefore, the TER Circular would not in any manner impede the Noticees from booking any such scheme related expenses to its own books.*

(x) *Noticees submitted that there can be no case of churning of portfolio or mis-selling to the Investors since the said schemes are ETFs and FoFs which are majorly Direct Plan oriented schemes and therefore, there is no participation of the distributors and there is no discretion lies to hold any shares outside the proportion of securities holding afforded by the trailing index or the investee fund (as the case may be) and therefore, there can be no churning or mis-selling.*

(xi) *Noticees submitted that majority of the expenses incurred by the Noticees in relation with the said schemes include Index Fees, R&T, Custody, Audit Fees, Printing, Marketing, Courier, Bank Charges. While certain expenses would have a direct correlation with the AUM and/or amounts/units transacted, certain expenses have no correlation therewith and would remain as fixed costs to the schemes which are either miniscule or causing a severe dent to the scheme is not able to augment with passage of time. It is also to be noted that certain expenses such as Index Fees, etc. are upfront lumpsum fixed expenses which cause severe strain on the funds especially in situations where the AUM is meagre and there would be a considerable strain on the investors if the burden was put to the scheme in its entirety. For Ex., If the AUM of an ETF scheme is currently at Rs. 2 Crores, expenses such as Index Fees remain to be an annual fixed sum of around Rs. 2 Lakh+ applicable taxes. Given that the present expense itself would not only exhaust but also outright breach the prescribed daily spend limits leaving no room for any other expenses which the scheme would need to bear and/ or which were already borne by it.*

(xii) Noticees submitted that vide email dated January 30, 2020 it sought clarification from SEBI relating to the interpretation of Regulation 52(1) of the mutual fund regulation vis-à-vis the TER Circular, however, no response was provided, and Noticees was only made aware of the same after the order was passed against DSP Investment Managers Private Limited.

(xiii) Noticees submitted that the practice of aggregating of scheme-related expenses between the books of the scheme and the AMC, especially in the case of ETFs and FoFs was being carried out market wide and the same was solely attributed to the interpretation of Regulation 52 of the MF Regulations vis-a- vis the TER Circular. It is also important to bear in mind that the present issue solely emanates from an interpretational issue qua the MF Regulations vis-a-vis the TER Circular, therefore, any possible non-compliance which would occur from a supposed faulty interpretation of the same should not in any manner be treated as a violation by applying a judicious approach in the matter.

(xiv) Noticees submitted that they have never defrauded or deceived any investors interest in any manner. They have never even have received any such complaints from any of our clients. We have always worked towards placing our investors' interests at the top and therefore, the said call was taken.

(xv) Noticees referred to the SEBI orders in the matters of IFCI Financial Services Limited and Marlatia Stock Broking Private Limited, Hon'ble SAT orders in the matter of UPSE Securities Limited vs. SEBI, DSE Financial Services Limited vs. SEBI, Cabot International Capital Corporation vs. Adjudicating Officer, SEBI, Reliance Industries Limited vs SEBI, Kensigton Investment Limited vs. SEBI and Brentfield Holdings Limited. vs. The Chairman, Adjudicating Officer, SEBI, Doogar and Associates Securities Limited vs. SEBI, Sterlite Industries Limited vs. SEBI and Hon'ble Supreme Court order in the matter of Adjudicating Officer SEBI vs Bhavesh Pabari, Hindustan Steel Limited vs. State of Orissa, Bhagat Ram vs. State of Himachal Pradesh, Ranjit Thakur vs. Union of India, ICAI vs. LK Ratna

(xvi) Noticees submitted that it has made considerable changes in treatment of such expenses and the same is evident from the fact that no such spillover expenses arose

in FY 2023. Therefore, the said violations can in no manner be termed as repetitive in nature.

7. In addition to the submissions made above, Noticee 2 made the following additional submissions –

(xvii) Noticee 2 submitted that the primary role of the Noticee 2 as a Trustee is to ensure that the affairs of the Mutual Fund and it's schemes is in nowhere to be run in any manner which is to the detriment of the unitholders. Keeping into mind that a Mutual Fund is formed as a "Trust" where the Noticee 2 is designated as a Trustee and the unitholder in a Mutual Fund Scheme is designated as a "Beneficiary", the primary responsibility of the Noticee 2 as a Trustee is to further the interest of the Beneficiary and to ensure that no detriment is caused to the interest of the unitholders. Considering the same, the SCN has in nowhere made any mention as to how any detriment has been caused to the interest of the unitholders which could have made the Noticee 2 amenable to any penalty. Such detriment to the interest of the unitholder caused due to negligence or contrivance of the Trustee could have been portrayed the Noticee 2 in default of its primary object and hence no deliberate action or inaction on part of the Noticee 2 which could warrant imposition of penalty on the Noticee 2 can be found in the SCN for which the SCN deserves to be quashed qua the Noticee 2.

8. Vide hearing notice dated April 25, 2024, opportunity of hearing was given to the Noticees on May 09, 2024. Hearing Notice issued to the Noticees through SPAD was delivered and Hearing Notice was also sent through Digitally Signed E-mail dated April 26, 2024 which was delivered and the delivery is on record. However, vide email dated May 03, 2024 Noticees sought adjournment of the hearing scheduled on May 09, 2024. In view of the same, vide email dated May 08, 2024 second opportunity of hearing was provided to Noticees on May 15, 2024.

9. Authorized Representative (AR) of the Noticees attended the hearing on the scheduled day and reiterated the submission made vide reply dated April 16, 2024 and the AR further sought time till May 29, 2024 for making the additional submissions, the request of the AR was acceded to. Vide email dated May 28, 2024 Noticees submitted the additional reply dated May 28, 2024 and made the following additional submissions-

(i) Noticees submitted that from the bare perusal of the Regulation 52 (4) of the Mutual Fund Regulations, 1996 and the list of expenses provided therein, it is clear that the Mutual Fund Regulations themselves provides discretion to the AMC to charge any scheme related expenses to its own books. It is pertinent to note that the said sub-clause (4) of Regulation 52 uses the word "may" which clearly indicates that it gives the AMC a discretion and option to charge certain expenses to the books of the schemes, within the overall limits prescribed under the said regulations.

(ii) Noticees submitted that Regulation 52(4), 52(5) and 52(7) of the Mutual Fund Regulations are enabling provisions which allows the AMC to absorb the 'scheme related expenses' in its own books rather than in the books of the respective mutual fund schemes. Hence, there is no provision under the Mutual Fund Regulations, which precisely and/or expressly prohibits the AMC from absorbing all/any of the scheme related expenses in its own books and in absence of any such regulations, such absorption of the scheme related expenses by the AMC is presumed to be permitted.

(iii) Noticees submitted that there is an apparent discrepancy between regulation 52(1) and 52(4) of the Mutual Fund regulations and the TER circular.

(iv) Noticees submitted that from the perusal of Regulation 52(1), it is not clear that what nature and type of expenses needs to be appropriated from the individual schemes, while from the perusal of the list of expenses mentioned in Regulation 52(4) it becomes clear that the said expenses are related to the schemes managed by the AMC yet the said provision provides necessary discretion to the AMC to either charge the said expenses to the books of the schemes or to its own books.

(v) Noticees submitted that while TER Circular has been issued and the same states that the 'scheme related expenses' needs to be paid from the books of the respective scheme, the same is clearly repugnant to the Regulation 52(4) of the Mutual Fund Regulations which provides discretion to the AMC to either charge the said expenses to the books of the schemes or to its own books.

(vi) Noticees referred to the order of hon'ble Supreme Court in the matter of Uniflex Cables Limited vs. Commissioner, Central Excise, Surat-21. Noticee submitted that the present case warrants departure from the "Literal Rule of Interpretation" and adoption of

"Mischief Rule" whereby the meaning, import and applicability of the provision of the law (here TER Circular) needs to be determined by assessing the intent of the legislature (here SEBI) while addressing the mischyief which the law determines to cure.

(vii) *Noticees submitted that Clause A (1) of the TER Circular was introduced to address the menace of distributor commission given to the empaneled distributors in excess of the stipulated limits whereby the excess of such commission subsequently got absorbed in the books of the AMC which has deep pockets resulting in unholy competition, rampant mis-selling of Mutual Funds to gullible investors by the distributors and Portfolio Churning of the Investors on pretences of the Distributors.*

(viii) *Noticees further referred to the order of the Hon'ble Supreme Court in the matter of Bengal Immunity Company vs. State of Bihar and RMD Chamarbaugwalla vs. Union of India, RMD Chamarbaugwalla, SEBI vs. Ajay Agarwal.*

(ix) *Noticees submitted that delegated legislation (here the TER Circular) cannot traverse beyond the contours of the parent legislation (Mutual Fund Regulations) and hence the TER Circular cannot override, substitute or supplant the express provisions, especially Regulation 52(4) of the Mutual Fund Regulations. In this regard, noticee referred to the Hon'ble Supreme Court orders in the matter of Rajinder Singh vs State of Punjab and Ors, State of tamilnadu vs P. Krishnamurthy, state of Karnataka vs H. Ganesh Kamath and ors.*

(x) *Noticees submitted that the expenses absorbed by the AMC in the present case mainly comprise of Index Fee which needs to be paid to the Stock Exchanges. Such fees paid to the Stock Exchanges, at the relevant time, was fixed in nature and did not fall under the categories of recurring expenses mentioned in Regulation 52(4) of the Mutual Fund Regulations.*

(xi) *Noticees submitted that following the mandate of Regulation 52(1) and the TER Circular, it will apparently be in contravention of Regulation 52(5) and if the AMC follows the mandate of Regulation 52(5), the same will be observed as a violation of the TER Circular, as in the present case.*

(xii) *Noticees submitted that the actions/inactions of the AMC alleged to have resulted in violations of the TER Circular is due to inconsistencies within the Mutual Fund Regulations and the TER Circular which has unfairly resulted a Catch-22 situation because of contradictory regulations and laws.*

(xiii) *Noticees further submitted that if the TER Circular is construed and applied strictly (leading to Scheme absorbing the scheme related expenses), the same will severely dent and put undue stress on the schemes with smaller Asset Under Management (hereinafter referred to as "AUM") in comparison to schemes with AUM on higher side.*

(xiv) *Noticees submitted that it may have been a pure commercial and/ or business decision to bear a portion of the scheme-related expenses for the said schemes, the said decision was taken in good faith and for the sole benefit of the investors. It submitted that if AO would proceed in imposing a monetary penalty on the Noticee, it would only result in punishing the Noticee despite no harm ever being caused to any investor for its actions. The Noticee submitted that the expenses actually booked in the books of the schemes were never higher than the expense limits disclosed to the investors. In this regard, Noticee referred to the order of the Supreme Court in the matter of I.P. Holdings Asia Singapore Pvt Ltd vs SEBI.*

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

10. I have taken into consideration the facts and circumstances of the case, the submission of the Noticees and the material available on record. The issues that arise for consideration in the present case are:

ISSUE I: Whether Noticee 1 violated the provisions of Clause A (1) of SEBI Circular dated October 22, 2018 and Noticee 2 violated the provisions Regulation 18(9) read with regulation 77 of SEBI (Mutual Funds) Regulations, 1996?

ISSUE II: Does the violation, if any, on part of the Noticees attract penalty under Section 15E of the SEBI Act for Noticee 1 and under Section 15HB of SEBI Act for Noticee 2?

ISSUE III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

11. Before proceeding further, it will be appropriate to refer to the relevant provisions:

SEBI circular dated October 22, 2018

Total Expense Ratio (TER) and Performance Disclosure for Mutual Funds

Clause A - Transparency in TER - *In order to bring transparency in expenses, reduce portfolio churning and mis-selling in mutual fund (MF) schemes, the following shall be adhered to:*

1. In terms of Regulation 52(1) of SEBI (Mutual Funds) Regulations, 1996, all scheme related expenses including commission paid to distributors, by whatever name it may be called and in whatever manner it may be paid, shall necessarily be paid from the scheme only within the regulatory limits and not from the books of the Asset Management Companies (AMC), its associate, sponsor, trustee or any other entity through any route.

Securities and Exchange Board of India (Mutual Funds) Regulations 1996

Regulation 18 - Rights and obligations of the trustees.

(9) The trustees shall ensure that all the activities of the asset management company are in accordance with the provisions of these regulations.

Regulation 77- Power of the Board to issue clarifications

In order to remove any difficulties in the application or interpretation of these regulations, the Board shall have the power to issue clarifications and guidelines in the form of notes or circulars which shall be binding on the sponsor, mutual funds, trustees, asset management companies and custodians.

FINDINGS

12. I have gone through the submissions made by the Noticees and the other material on record and I now proceed to deal with the same. Before proceeding with the matter on merits, I first deal with the preliminary submission of the Noticees that Regulations 52 (5) and 52 (7) of the Mutual Fund Regulations,1996 and the Proviso Circular, makes it clear that the AMC is at liberty to charge certain expenses of particular nature and under certain circumstances to the books of the AMC, therefore, the act of Noticee 1 charging the expenses to its book instead of the Mutual Fund Schemes is not a 'restricted activity' and

therefore it is not falling within the ambit of a violation as contemplated under Section 15-E of the SEBI Act,1992. I note that, as per Section 15E of the SEBI Act, penalty can be levied upon asset management company of a mutual fund registered under the SEBI Act who fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies in this regard, I note that the combined reading of the regulation 52(5) and 52(7) of the mutual fund regulation and the TER circular makes it clear that all the scheme related expenses shall necessarily be paid from the scheme only within the regulatory limits (in the present case the regulatory limit is 1%) and restrict the AMC to charge the expenses of the scheme upto 1% from its own books. Therefore, the abovementioned contention of the Noticees is not tenable.

13. I now proceed to deal with the merits of the case in respect of the alleged contraventions by the Noticee.

ISSUE I: Whether Noticee 1 violated the provisions of Clause A (1) of SEBI Circular dated October 22, 2018 and Noticee 2 violated the provisions Regulation 18(9) read with regulation 77 of SEBI (Mutual Funds) Regulations, 1996?

14. During examination, it was observed that, in the 5 ETFs Noticee 1 could charge upto 1% as TER to the scheme, however, Noticee 1 charged less than 1% expense to the schemes and charged certain scheme expenses to the AMC books.

15. Therefore, it was alleged that the Noticee 1 by bearing excess expenses of the scheme has allegedly violated the provisions of Clause A (1) of SEBI Circular dated October 22, 2018. Noticee 2 by not ensuring the compliance with aforesaid circulars by Noticee 1 have allegedly violated Regulation 18(9) read with regulation 77 of SEBI (Mutual Funds) Regulations, 1996.

16. I note that SEBI circular dated March 25, 2019 allows AMCs to pay the expenses that are very small in value but high in volume out of AMC's books up to a maximum of 2 bps of respective scheme AUM. However, in respect of the following schemes more than 2 bps of respective scheme AUM was charged to AMC books for the year ending on March 31, 2021 and March 31, 2022. Details of the schemes are as follows:

Scheme Name	Category of Scheme	Date since when Scheme is open for subscriptions	As on March 31, 2021			As on March 31, 2022		
			AUM (INR Crore)	Expense Ratio (%) charged to AMC books		AUM as on (INR Crore)	Expense Ratio (%) charged to AMC books	
				Direct Plan	Regular Plan		Direct Plan	Regular Plan
Nippon India ETF Dividend Opportunities	Other ETFs	23-Apr-14	2.44	1.0424%	NA	11.55	0.5605%	NA
Nippon India ETF Long Term Gilt	Other ETFs	11-Jul-16	14.42	0.0000%	NA	13.01	0.2082%	NA
Nippon India ETF Nifty BeES	Other ETFs	08-Jan-02	3,263.49	0.0000%	NA	7,549.02	0.0213%	NA
Nippon India Junior BeES FoF	Fund of Funds Scheme (Domestic)	11-Mar-19	66.11	0.0300%	0.000300337	116.19	0.0000%	0.0000%
Nippon India ETF Sensex Next 50	Other ETFs	06-Aug-19	15.41	0.3497%	NA	19.84	0.0000%	NA
Nippon India ETF 5 Year Gilt	Other ETFs	08-Apr-21	-	0.0000%	NA	7.23	0.2386%	NA

17. From the above table I observe that there are total 6 schemes wherein certain scheme expenses were charged to AMC books which has more than 2 bps of the respective scheme AUM.

18. The scheme wise TER structure of the above schemes are as follows:

Scheme Name	Date since when Scheme is open for subscriptions (DD/MM/YYYY)	Period ending as on	Direct / regular Plan	AUM (INR Crore)	Expense Ratio (%) charged to the scheme	Expense Ratio (%) charged to AMC books	Total Expense Ratio (%)
Nippon India ETF Dividend Opportunities	23-Apr-14	FY 21	Direct	2.44	0.1481%	1.0424%	1.1905%
		FY 22	Direct	11.55	0.1739%	0.5605%	0.7344%
Nippon India ETF Long Term Gilt	11-Jul-16	FY 21	Direct	14.42	0.0983%	0.0000%	0.0983%
		FY 22	Direct	13.01	0.0864%	0.2082%	0.2946%
	08-Jan-02	FY 21	Direct	3,263.49	0.0503%	0.0000%	0.0503%

Scheme Name	Date since when Scheme is open for subscriptions (DD/MM/YYYY)	Period ending as on	Direct / regular Plan	AUM (INR Crore)	Expense Ratio (%) charged to the scheme	Expense Ratio (%) charged to AMC books	Total Expense Ratio (%)
Nippon India ETF Nifty BeES		FY 22	Direct	7,549.02	0.0500%	0.0213%	0.0713%
Nippon India ETF Sensex Next 50	06-Aug-19	FY 21	Direct	15.41	0.2163%	0.3497%	0.5660%
		FY 22	Direct	19.84	0.2027%	0.0000%	0.2027%
Nippon India ETF 5 Year Gilt	08-Apr-21	FY 21	Direct	-	-	0.0000%	0.0000%
		FY 22	Direct	7.23	0.0860%	0.2386%	0.3246%
Nippon India Junior BeES FoF	11-Mar-19	FY 21	Direct	66.11	0.0200%	0.0300%	0.0500%
		FY 21	Regular	66.11	0.2800%	0.0300%	0.3100%
		FY 22	Direct	116.19	0.0200%	0.0000%	0.0200%
		FY 22	Regular	116.19	0.2800%	0.0000%	0.2800%

19. From the above table, I observe that for the Nippon India ETF dividend opportunities scheme, for FY 21 TER was 1.1905%, wherein expense ratio charged to AMC books was 1.0424% and expense ratio charged to the scheme was 0.1481%, for the same scheme in FY 22 the TER was 0.7344% and the expense ratio charged to the scheme was 0.1739% whereas the expense ratio charged to AMC books 0.5605%. Similarly, in the Nippon India ETF Long term Gilt scheme for FY 22 the TER was 0.2946% wherein the expense ratio charged to the scheme was 0.0864% and the expense ratio charged to AMC books was 0.2082%. In the Nippon India ETF Nifty BeES scheme for FY 22 TER is 0.0713% wherein the expense ratio charged to the scheme was 0.0500% and the expense ratio charged to AMC books was 0.0213%. In Nippon India ETF Sensex Next 50 TER is 0.5660% wherein the expense ratio charged to AMC books was 0.3497% and the expense ratio charged to the scheme was 0.2163%. In Nippon India ETF 5 year Gilt for FY 22 TER is 0.3246% wherein the expense ratio charged to the scheme was 0.0860% and the expense ratio charged to AMC books was 0.2386%. Lastly in Nippon India Junior BeES FoF for FY 21 direct plan TER was 0.0500% wherein the expense ratio charged to the scheme was 0.0200% and expense ratio charged to AMC books was 0.0300% and for the same scheme's regular plan FY 21 TER was 0.3100% wherein expense ratio charged to the scheme was 0.2800% and the expense ratio charged to AMC books was 0.0300%.

20. I note that in all the above schemes, Noticee 1 can charge higher TER to the scheme i.e. upto 1% TER, however, Noticee 1 has charged less than 1% expense to the schemes as against actual expense incurred by the schemes and charged more than 0.02% expense ratio to its AMC books.

21. I note that as per Clause A (1) of SEBI Circular dated October 22, 2018 all scheme related expenses shall necessarily be paid from the scheme only within the regulatory limits and not from the books of the Asset Management Companies (AMC), its associate, sponsor, trustee or any other entity through any route.

22. Noticees in its submission referred to regulation 52(7) read with regulation 52(6) and 52(6A) of the mutual fund regulation and submitted that there is no express and absolute bar on the AMC bearing scheme related expenses. Noticees further referred to regulation 52(5) read with regulation 52(2) or 52(4) of the mutual fund regulation and submitted that AMC is allowed to incur expenses and such bearing of expenses by AMC is not a matter of prohibition. Noticees submitted that TER Circular can be considered to supplant the provisions of the Mutual Fund Regulations, 1996 rather than supplementing or adding anything further in the provisions. I note that regulation 52(6)(b) of the mutual fund regulations provides that in case of index fund scheme or ETFs, TER of the scheme shall not exceed 1%. Further, Regulation 52(7) of the mutual fund regulations provides that the expenditure in excess of the 1% limits shall be borne by the AMC or by the trustee or sponsors. Therefore, I observe that regulation 52 of the mutual fund regulation has abundantly made it clear that upto the limit of 1% TER has to be borne by the scheme only and the expenses above the 1%TER shall be borne by the AMC, its trustee or by its sponsors. SEBI vide circular dated October 22, 2018 further clarified that all the scheme related expenses shall necessarily be paid from the scheme only within the regulatory limits and not from the books of the AMC, its associate, sponsor, trustee or any other entity through any route. It may also be mentioned that as per regulation 77 of the Mutual Funds Regulation, clarifications and guidelines can be issued in the form of circular and which shall be binding on the AMC and trustees. Clause A1 of SEBI circular dated October 22, 2018 provides clarification/guidelines in terms of regulation 52(1) of mutual funds regulations, therefore SEBI circular dated October 22, 2018 is part of the Mutual Funds Regulation. Thus, the provisions of the mutual fund regulation and the SEBI circular dated October 22, 2018 has to be read conjointly and not in isolation. From the conjoint reading

of abovementioned regulations and circulars, I note that upto the limits specified in regulation 52 (6) and (6A) of mutual fund regulation all scheme related expenses shall be paid from the scheme only and AMC can absorb the expenses as per Regulation 52(7) in excess of limits specified in sub-regulations (6) and (6A). Hence, I observe that the abovementioned contention of the Noticees is not tenable.

23. I note that in reply to the SCN Noticees submitted that the present issue solely emanates from the faulty interpretation by the Noticee of the regulation 52 of the Mutual fund regulations vis-a-vis the TER circular. In this regard I note that *"Ignorantia juris non excusat"* which means that person who is unaware of a law may not escape liability for violating that law merely by being unaware of its content. Therefore, the abovementioned contention of the Noticees is not tenable.

24. I note that, Noticees submitted that regulation 52(4) uses the word "may" which indicates that it gives the AMC a discretion and option to charge certain expenses to the books of the schemes, within the overall limits prescribed under the said regulations. In this regard I note that on the conjoint reading of regulation 52 of the mutual fund regulation along with SEBI circular dated October 22, 2018, it is clear that the scheme related expenses upto 1% shall be charged from the scheme only and not from the books of AMC and no discretion is given as misconceived by the Noticees. Therefore, the abovementioned contention of the Noticees is not tenable.

25. Noticees submitted that in the present case Mischeif rule of interpretation shall apply while determining the meaning, import and applicability of the provision of TER Circular. In this regard, I note that the mischief rule of interpretation applies where there is ambiguity in the statute, however, in the present case there is no ambiguity in the application of the SEBI circular dated October 22, 2018, therefore, the abovementioned contention of the Noticees is not tenable.

26. Noticees further submitted that vide email dated January 30, 2020 it sought clarification from SEBI relating to the interpretation of Regulation 52(1) of the mutual fund regulation vis-à-vis the TER Circular, in this regard I note that the of Regulation 52(1) of the mutual fund regulation provides that all the expenses should be clearly identified and appropriated in the individual schemes and clause A1 of SEBI circular dated October 22, 2018 provides that all scheme related expenses including commission paid to distributors, by whatever

name it may be called and in whatever manner it may be paid, shall necessarily be paid from the scheme only within the regulatory limits and not from the books of the Asset Management Companies (AMC), its associate, sponsor, trustee or any other entity through any route. Therefore, I note that regulation 52(1) of the mutual fund regulations and Clause A1 of SEBI circular dated October 22, 2018 are self-explanatory in nature.

27. Noticees submitted that schemes in issue are ETFs and FoFs which are majorly Direct Plan oriented schemes. In this regard I note that the clause A1 of SEBI circular dated October 22, 2018 is applicable on all types of schemes and has not made any exceptions. If varied practice is followed it has a potential to create anomalies in the mutual fund industry as profitable AMCs or AMCs with deep pockets can afford to pay schemes expenses from AMC books whereas small AMCs won't be able to borne such expenses from their books. Thus the objective of the TER circular is to bring transparency in expenses, reduce portfolio churning etc. and not to allow varied practice to be followed. Therefore, the abovementioned contention of the Noticees is not tenable.

28. I note that clause A1 of SEBI circular dated October 22, 2018 mandates that all scheme related expenses shall necessary be paid from the scheme only within the regulatory limits and not from the books of the AMC, Regulation 52(7) of SEBI (Mutual Funds) Regulations, 1996 permits that any expenditure in excess of the limits specified in sub-regulations (6) and (6A) shall be borne by the asset management company or by the trustee or sponsors. As per regulation 52(6)(a)(i) and 52(6)(b) of the mutual fund regulation, the regulatory limit for ETF and FoF schemes is of 1%.

29. However, in the instant matter, as observed above at paragraph 20 Noticee 1 has not even exhausted the maximum permissible total expense ratio permitted under Regulations 52(6) and (6A) of SEBI (Mutual Funds) Regulations, 1996 (i.e. of 1%) in the case of aforesaid 5 ETFs and 1 BeEs FoF and the charged the expenses of these schemes to the AMC books.

30. Therefore, I observe that the Noticee 1 by bearing excess expenses of the scheme from the books of the AMC has violated the provisions of Clause A (1) of SEBI Circular dated October 22, 2018 which requires that all scheme related expenses shall necessarily be paid from the scheme only within the regulatory limits and not from the books of the Asset Management Companies (AMC), its associate, sponsor, trustee or any other entity through any route.

31. Further, I note that Regulation 18(9) of SEBI (Mutual Funds) Regulations, 1996 states that the trustees shall ensure that all the activities of the asset management company are in accordance with the provisions of these regulations. Regulation 77 of SEBI (Mutual Funds) Regulations, 1996 mentions that in order to remove any difficulties in the application or interpretation of these regulations, the Board shall have the power to issue clarifications and guidelines in the form of notes or circulars which shall be binding on the sponsor, mutual funds, trustees, asset management companies and custodians. Thus, as the allegation levelled against Noticee 1 stands established, I observe that Noticee 2 by not ensuring the compliance with Clause A (1) of SEBI Circular dated October 22, 2018 by Noticee 1 has violated Regulation 18(9) read with regulation 77 of SEBI (Mutual Funds) Regulations, 1996.

ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 15E and 15HB of SEBI Act?

32. As has been established in the foregoing paragraphs that Noticee 1 has violated the provisions of Clause A1 of SEBI circular dated October 22, 2018 and Noticee 2 has violated the provision of Regulation 18(9) read with Regulation 77 of SEBI (Mutual Funds) Regulations, 1996;

33. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund interalia held *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."*

34. Therefore, I am convinced that it is a fit case for imposition of penalty under the provisions of Section 15E of the SEBI Act on Noticee 1 and under Section 15HB of the SEBI Act on Noticee 2 which reads as given below:

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.*

Section 15E of SEBI Act:- Penalty for failure to observe rules and regulations by an asset management company.

Where any asset management company of a mutual fund registered under this Act, fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies, such asset management company shall be liable to [a penalty [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]].

ISSUE III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

35. While determining the quantum of penalty under sections 15E and 15HB of the SEBI Act and it is important to consider the factors stipulated in section 15J of SEBI Act which reads as under:-

15J - Factors to be taken into account by the adjudicating officer

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

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

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

(c) the repetitive nature of the default."

36. It is noted that available records do not specify the disproportionate gains or unfair advantage made by the Noticees or the specific loss suffered by the investors due to aforesaid violations by Noticees. Any SEBI registered intermediary is bound to comply with SEBI circulars and regulations mandatorily, irrespective of the fact whether such non compliances result in causing any actual loss to any investor or not. It is trite law that when a rule, law, regulation, circular demands for certain things to be done in a particular manner, those acts or things are required to be done in that specified manner only. Any deviation

from complying with the rules or any action deviant from the manner prescribed under such rules and regulations, would be a sufficient ground for inviting penal action against such deviation or non-compliances. Thus in the instant case also the violations of the Noticees calls for appropriate penalty.

ORDER

37. Having considered the facts and circumstances of the case, the material available on record, the submissions made by the Noticees, the factors mentioned in Section 15J of the SEBI Act, and also taking into account judgment of the Hon'ble Supreme Court in *SEBI vs. Bhavesh Pabari (2019) 5 SCC 90* and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the SEBI Rules, 1995, I hereby impose following penalty under section 15E and 15HB of the SEBI Act, 1992 on the Noticees:

Noticee No.	Name of Noticee	Penalty Provisions	Penalty (Rs.)
1	Nippon Life India Asset Management Limited	Section 15E of SEBI Act, 1992	2,00,000/- (Rs. Two Lakh only)
2	Nippon Life India Trustee Limited	Section 15HB of SEBI Act, 1992	1,00,000/- (Rs. One Lakh only)

38. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

39. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

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

41. In terms of the provisions of rule 6 of the SEBI Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

BARNALI MUKHERJEE

Digitally signed by BARNALI MUKHERJEE
Date: 2024.08.08 16:02:02 +05'30'

Place: Mumbai **BARNALI MUKHERJEE**

Date: August 08, 2024 **ADJUDICATING OFFICER**