



**ADITYA BIRLA
CAPITAL**

PROTECTING INVESTING FINANCING ADVISING

Ref: SECTL/2017 – 56

November 24, 2017

BSE Limited

Phiroze Jeejeebhoy Towers,
Dalal Street,
MUMBAI – 400 001

National Stock Exchange of India Limited

Exchange Plaza, 5th Floor,
Plot No. C/1, G-Block,
Bandra-Kurla Complex, Bandra (East)
MUMBAI – 400 051

Dear Sir/Madam,

Sub: Clarification on media report “SEBI imposes Rs. 10 lakh fine on Aditya Birla Money” - Disclosure under Regulation 30 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015

Scrip Code: BSE – 532974; NSE – BIRLA MONEY

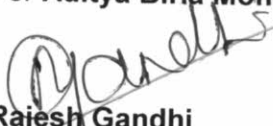
We would like to bring to your kind notice that the order issued by SEBI emanates from an enquiry conducted by the Adjudicating Officer (“the AO”) appointed by SEBI to ascertain whether Aditya Birla Money Limited (“ABML”) indulged in activities which are akin to Portfolio Management Services (PMS) through its registration as a Stock Broker for its research recommendations during the year 2010. The AO has levied a penalty of Rs. 10,00,000/- under Section 15HB of the SEBI Act, 1992. ABML has yet to receive original copy of Order from SEBI. A copy of the order as obtained from SEBI’s website is attached herewith for your kind reference.

We would further like to inform you that ABML has an option to file an appeal before the Securities Appellate Tribunal (“SAT”) within 45 days from the date of receipt of the Order of the AO.

This is for your information and record please.

Thanking you,

Yours faithfully,
For **Aditya Birla Money Limited**


Rajesh Gandhi
Company Secretary



Encl.: As above

Aditya Birla Money Ltd.

Ali Centre, No. 53, Greaves Road, Chennai - 600 006

+91 44 3919 0002/3 | (F) +91 44 2829 0835

care.stocksandsecurities@adityabirlacapital.com | www.adityabirlamoney.com

Registered Office:

Indian Rayon Compound, Veraval,
Gujarat -362 266

CIN: L65993GJ1995PLC064810

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/ AO/SM/ 100 /2017-18]**

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

In respect of:

**Aditya Birla Money Limited
(PAN: AAACA7472K)**

In the matter of inspection of Aditya Birla Money Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), conducted an inspection of books and records of Aditya Birla Money Limited (hereinafter referred to as "ABML"/ "Noticee") for the period from April 1, 2010 till August 31, 2011 to ascertain whether the Noticee had carried put unregistered PMS activities (without obtaining the necessary registration) through its registration as a stock broker before obtaining registration as PMS in July 2010 through its 'Option Maxima Strategy' and therefore, violated the provisions of section 12 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with clause A(3) and A(5) of Code of Conduct for brokers as specified under Schedule II of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as "Brokers Regulations") read with regulation 9 and 26(xiv) of the Brokers Regulations.



APPOINTMENT OF ADJUDICATING OFFICER

2. Vide an order of Whole Time Member, SEBI, dated June 8, 2016, Mr. D Sura Reddy, GM, SEBI was appointed as the Adjudicating Officer under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge the alleged violations of SEBI Act and Brokers Regulations. On transfer of the matter vide order dated May 18, 2017, the undersigned has been appointed as the Adjudicating Officer to inquire into and adjudge under the provisions as enumerated above.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD-2/DSR/RG/PU/18474/2016/2 dated June 29, 2016 (hereinafter referred to as 'SCN') was issued to the Noticee alleging the following:
 - i) During inspection of the books and records of ABML, it was observed that ABML had started a trading strategy viz. Option Maxima (also called the 'short strangle strategy' or 'sell strangle' strategy) from December 2008. This strategy was constructed by selling one out-of-the-money NIFTY put option and one out-of-the-money NIFTY call option, simultaneously. A call option on the index is said to be out-of-the-money when the value of the current index stands at a level which is less than the strike price (i.e. spot price < strike price). On the other hand, a put option on index is said out-of-the-money if the value of the index is above the strike price. For instance, the strategy set by the broker in the band of index ranging between 5800 – 6500 points, when a client opts for this strategy is, that he can
 - a. Earn profit – if market runs within the band of index 5800 – 6500 points.
 - b. Suffer loss – if market runs over/below band of index 5800 – 6500 points.This particular option strategy is a 'limited profit- unlimited risk' strategy that is taken when the option trader thinks that the underlying security will experience little volatility in the near term.
 - ii) Further, it was observed that, ABML had recommended the Option Maxima Strategy to the 749 clients (who had opted for it) and 640 clients



had availed of this strategy. The year wise break of the number of clients enrolled for the Option Maxima Strategy is as under:

S. No	Year	No. of clients enrolled
1	2008	56
2	2009	379
3	2010 (up to September 24, 2010)	314
	Total Clients	749

- iii) Upon analysis of the terms and conditions of the said strategy, it was noted that some of the terms and conditions of the Option Maxima Strategy were very similar to that of PMS activities. Further, it was observed that all the 'Option Maxima' trades were executed only from the terminal located at the head office (Chennai) of ABML, even though several of its clients were from Delhi and Bombay and all the trades executed under the said strategy were tracked from the head office of ABML.
- iv) It was noted that while ABML is separately registered with SEBI as a Portfolio Manager (only from July 2010), these activities akin to PMS (carried out in the Option Maxima Strategy) were carried out in the normal broking registration held by it and not as a registered Portfolio Manager.
- v) It is noted that brokerage charged by ABML is fixed on the basis of the return earned by clients and no additional brokerage was to be charged if the return is less than 18% p.a. Therefore, it is alleged that the brokerage charged by ABML fixed on the basis of the returns earned by the clients was akin to that of PMS fees.
- vi) A separate sub account was opened with Suffix A to his/her existing client account and hence a special status was given to these clients and the investments were tracked accordingly. Therefore, it is alleged that ABML had managed a discretionary account for and on behalf of clients who are registered in the option maxima strategy and had rendered PMS to its clients, while the registration granted by SEBI disallows it from undertaking such activities.
- vii) It is further observed that the Client's positions in the strategy for the month of September 2010 showed a high amount of Mark to Market



losses due to unidirectional and rapid upward movement of the NIFTY index. In order to control the losses, ABML had decided to windup all the open position in Option Maxima Strategy during September 21-22, 2010, which resulted in losses to the tune of ₹ 103.24 Crores. Further, it was observed that in the month of September 2010, 316 clients had availed position under option maxima strategy. ABML had compensated the said clients for the loss arising out of September month trades and also paid the balance available in ledger of the sub account on August 26, 2010.(i.e. date of expiry of August month contract) and settled their account to zero in September 2010. It is noted that in a normal course of business, a broker would not compensate the client for trading losses of a client. it is alleged that ABML had settled the losses of only those clients who had opted for the Option Maxima Strategy, thus, distinguishing them from the normal trading clients.

4. The Noticee, vide letter dated July 14, 2016 sought time till August 1, 2016 to submit its reply.
5. Subsequently, the Noticee, vide letter dated August 1, 2016 replied to the SCN stating, inter alia, the following:
 - *We would like to bring to your kind attention that Apollo Sindhoori Capital Investments Limited (before name change) was registered under SEBI (Portfolio Managers) Regulations 1993 vide registration no. INP 000002494 dated January 17, 2008. Consequent upon change in control of Apollo, an application was submitted under SEBI (Portfolio Managers) Regulations 1993 vide letter dated 30 April 2010 to effect change of name.*
 - *Further we submit that mere holding of certificate of registration under PMS shall not be constituted as carrying out PMS related activity without following the Regulations. The activity carried out by us was as a Stock Broker and within the framework of SEBI Stock Broker and Sub Broker Regulations 1992 and does not attract any of the Regulations related to Portfolio Managers.*
 - *Further, as per our records, we have not received any complaint from any of the clients who opted to avail Options Maxima research strategy/ research recommendations.*
 - *We would like to submit that it is very much within the purview of stock broking activity to provide research recommendations to customers. Providing recommendations are part and*



parcel of the services offered by stock brokers from the purview of SEBI (Investment Advisors) Regulations, 2013.

- We would like to submit that the Options Maxima strategy was availed by customers from April 2009 onwards.
- We would like to submit that the terms and conditions were prescribed to deal with operational process incidental to the execution of a trading strategy and can never be equated or be viewed as PMS operation. The content of consent letter is simply for creation of sub-account under broking (trading) account and also to act as a cover note for payment of required margin money. None of the terms and conditions is subversive to the Regulations/ Guidelines prescribed by SEBI/ Exchanges. Similarly, creation of sub-account was merely an internal code created to enable clients to independently track the transactions themselves.
- Brokerage is for services provided by the Stock Broker and the same is not above the limits prescribed by SEBI/ Exchanges. In fact brokerage has been charged at minimal levels – as low as Rs. 5/ options lot when the prevailing brokerage in the market at that point of time was Rs. 100/- per options lot.
- We would like to submit that the KYC forms and agreements executed by us with our clients are as per the formats prescribed by SEBI/ Exchanges for broking operations and the very same KYC was executed by all clients who have open trading accounts with us during the said period.
- You would observe that in case of clients, who executed the “Options Maxima” strategy, only brokerage was charged and no profit/ performance linked fees was charged. Further, clients who had availed of Options Maxima strategy had the liberty to vary the investment pattern at any point of time. They can either increase or can decrease their positions. All such pay outs were also released within 24 hours as applicable for standard pay outs under stock broking regulations. They were entitled to close positions and/ or can take payouts at any point of time. There was no specific investment period nor there any time. The clients were also in receipt of contract notes, statement of accounts as per the periodicity envisaged under the byelaws and regulations of Stock Exchange and also transaction SMS towards trade confirmation.
- We would like to submit that the sub-account was created only to enable clients to track their transactions and not otherwise. All the transactions were executed at Exchange platform through the respective customer's UCC. Merely providing a facility to track transactions would not mean that the same will fall under the ambit of PMS Regulations. In fact as per PMS Regulations no duty is cast on the Portfolio Manager to share the details of transactions effected in portfolios of its clients. The sub account created is only for



enabling client to track trades on his own volition for follow up. Further it is to be appreciated that under Discretionary PMS, the decision to buy/ sell rests with the Fund Manager wherein the given case, the client is taking all his/ her decision under the normal broker – client relationship so, we strongly submit that ABML has carried out only Stock Broking activities and that too within the then prevailing rules, regulations and bye laws of the exchange as a registered Stock Broker.

- *Though all those losses were incurred by the client and the fact that though ABML as a Stock Broker was neither bound by nor liable for any loss or damage caused to the Client by execution of trading strategies based on research based advices and/ or recommendations, the decision to reimburse the losses was undertaken to protect the larger enterprise and brand value.*

6. In the interest of natural justice and in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on September 22, 2017, vide notice dated August 29, 2017. Mr. Sandeep Parekh, Ms. Deepika Goyal, Mr. Pradeep Sharma and Mr. L R Murali Krishnan (Authorised Representatives) appeared on the day of hearing and reiterated the submissions made vide their letter dated August 1, 2016 in reply to SCN. The Noticee submitted that it shall make further submissions on or before October 5, 2017. Vide letter dated October 5, 2017, the Noticee submitted, inter alia, the following:

- *It is submitted that nowhere in the Notice is it mentioned as to how activities of the Noticee were fraudulent or deceptive and have led to distortion of market equilibrium. In fact, the Notice does not mention anything about effect on market due to the Options Maxima Strategy (hereinafter referred to as, the Strategy) undertaken by the Noticee. Therefore, this charge does not stand good in the present matter.*
- *It is submitted that none of the conditions provided under Regulation 9 were breached by the Noticee. The Noticee held a valid certificate of registration with SEBI at all times. All the bye-laws of NSE were duly complied with. In fact, NSE has itself investigated the matter and has approved the activities of the Noticee and has not alleged any violation of its bye-laws by the Noticee. Further, the change in control of the Noticee was duly informed to SEBI and a fresh certificate of registration was given by SEBI, acknowledging such change.*
- *In accordance with this term, the brokerage charged ranged between Rs. 25 to Rs. 100, varying on the basis of volume of transactions undertaken by the client.*



- It is further submitted that the difference between fees levied by a portfolio manager and brokerage charged by a stock broker is that the former charges it on the basis of performance of the portfolio of a client, i.e. as a percentage of transactions and the latter charges it on the basis of the volume of transactions undertaken by a client.
- It can be noted that the condition of minimum 25 lakhs cash I 40 lakh worth of securities was not practically implemented. It can also be noted that margins requirements are basis the value of transactions effected by the respective clients i.e. the volume of transactions effected by clients who have given less than 25 lakhs cash margin or 40 lakhs scrip margin is less than the volume of transactions effected by clients who have given more than 25 lakhs of cash margin or 40 lakhs of scrip margin.
- The Noticee has provided incidental advice by suggesting their clients regarding trading opportunities in Nifty index. Further transactions were effected only after obtaining clients' consent.
- The Noticee has provided regular contract notes, transaction statements and financial statements within the prescribed time period. Such contract notes have also been supplied to SEBI in its earlier communication with the Noticee. Therefore, the conduct of the Noticee clearly implies that they intended to provide broking services to their clients and not portfolio management services.
- Chennai being the head office of Noticee possessed most experienced personnel of the Noticee who were proficient in advising and assisting in matters related with derivative contracts. Due to this and in order to ensure proper tracking of transactions being undertaken under the Strategy, all the orders were placed from a centralized location.
- It is submitted that the sole purpose of creation of sub-accounts was to track the output of such a risky strategy in a transparent manner. This intent is evident from the fact that in September 2010 when the Strategy was not feasible anymore, due to conditions prevailing in the stock market, the Strategy was smoothly withdrawn by the Noticee without affecting other investments I transactions of the clients.



CONSIDERATION OF ISSUES AND EVIDENCE

7. I have carefully perused the charges levelled against the Noticee in the SCN, its reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-
- (a) Whether the Noticee has violated the provisions of Section 12 of the SEBI Act, 1992, read with Clauses A(3) & A (5) of Code of Conduct for brokers specified in Schedule II read with Regulation 9 and 26 (xiv) of the Broker Regulations?
 - (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15HB of SEBI Act?; and,
 - (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act read with the Adjudication Rules?
8. Before proceeding further, I would like to refer to the relevant provisions of SEBI Act and the Brokers Regulations.

SEBI Act

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12.(1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application :

Provided further that any certificate of registration, obtained immediately before commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

(1A) No depository, participant, custodian of securities, foreign institutional investor, credit rating agency, or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:



Provided that a person buying or selling securities or otherwise dealing with the securities market as a depository, participant, custodian of securities, foreign institutional investor or credit rating agency immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to buy or sell securities or otherwise deal with the securities market until such time regulations are made under clause (d) of sub-section (2) of section 30.

(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:

Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.

Explanation.-- For the removal of doubts, it is hereby declared that, for the purpose of this section, a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.

(2) Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

(3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

Broker Regulations

Conditions of registration.

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

- (a) the stock broker holds the membership of any stock exchange;*
- (b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;*
- (c) where the stock broker proposes change in control, he shall obtain prior approval of the Board for continuing to act as such after the change;*
- (d) he shall pay fees charged by the Board in the manner provided in these regulations;*
- (e) he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;*
- (f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and*
- (g) he shall at all times maintain the minimum networth as specified in Schedule VI.*

SCHEDULE II CODE OF CONDUCT FOR STOCK BROKERS



[Regulation 9]

A. General.

(1)

(2)

(3) *Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.*

(4)

(5) *Compliance with Statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.*

Liability for monetary penalty

26. *A stock broker or a sub-broker shall be liable for monetary penalty in respect of the following violations, namely-*

.....

(xiv) *Acting as an unregistered sub-broker or dealing with unregistered sub-brokers.*

.....

9. During inspection of the books and records of the Noticee, it was observed that the Noticee had started a trading strategy viz. Option Maxima (also called the 'short strangle strategy' or 'sell strangle' strategy) from December 2008. This strategy was constructed by selling one out-of-the-money NIFTY put option and one out-of-the-money NIFTY call option, simultaneously. A call option on the index is said to be out-of-the-money when the value of the current index stands at a level which is less than the strike price (i.e. spot price < strike price). On the other hand, a put option on index is said out-of-the-money if the value of the index is above the strike price. For instance, the strategy set by the broker in the band of index ranging between 5800 – 6500 points, when a client opts for this strategy is, that he can

a. Earn profit – if market runs within the band of index 5800 – 6500 points.

b. Suffer loss – if market runs over/below band of index 5800 – 6500 points.

This particular option strategy is a 'limited profit- unlimited risk' strategy that is taken when the option trader thinks that the underlying security will experience little volatility in the near term.

10. Further, it was observed that, ABML had recommended the Option Maxima Strategy to the 749 clients (who had opted for it) and 640 clients had availed of this strategy. The year wise break of the number of clients enrolled for the Option Maxima Strategy is as under:



S. No	Year	No. of clients enrolled
1	2008	56
2	2009	379
3	2010 (up to September 24, 2010)	314
	Total Clients	749

11. The gist of the terms and conditions of the said strategy is as below:

- a) "You are to provide a request letter for us to open a sub account under your existing trading account for the purpose of trading in options under the scheme.
- b) A minimum unit of required margin is either 25 lakhs cash or ₹40 lakhs securities shall be mandatory to qualify for such trading.
- c) Adequate clear credit balance in your main trading account may also be used as a margin for transacting in options segment. However one time separate written authorization needs to be furnished.
- d) The sub account shall be used for trading in options based only on the strategic advice given by Head Office.
- e) Our dealers shall place your orders only in the sub-account and only in the options segment and based entirely on our strategic advice only.
- f) You only have to provide your consent when our dealer contacts you before placing orders.
- g) As part of the tracking facility, you will be entitled to receive a quarterly options investment performance statistics.
- h) A nominal brokerage rate of Rs.50 per lot shall be charged both while buying and selling.
- i) Your trade initially shall be charged at Rs.25 per lot per leg i.e. both while buying and selling and in the likely event of returns exceeding 18% p. a. in case of scrip base capital and returns exceeding 24% p. a. in case of cash base capital the remaining unpaid brokerage of Rs.25 per lot shall be deducted from such excess returns, subject to 30% of the excess profit earned over and above 24% of the profit earned in case of cash base capital and 30% of excess profit earned over and above of 18% profit-earned in case of scrip Base Capital.
- j) In the extreme case of less than 18% p.a. returns, no additional brokerage will be charged.
- k) Surplus of initial investments may be claimed as payout by the clients on monthly basis, around 10th of every month."

12. The Noticee is a registered stock broker and after the promoter shareholding of Apollo Sindhoori Capital Investments Limited, a PMS was transferred to the



Noticee with effect from July 19, 2010, the same was intimated to SEBI and fresh certificate was obtained accordingly.

13. The main role of a stock broker is to execute the trades as ordered by the clients. In the present case, as per the terms and conditions of the Option Maxima Strategy, it is observed that orders were being placed in the sub-account, only in the options segment, based entirely on the strategic advice of the Noticee. The clients were only expected to give the consent when the dealer of the Noticee contacted them before placing orders. This is akin to a discretionary PMS. In normal course, the client instructs the stock broker to deal in a particular scrip. In this trading strategy, the broker takes the call of trading and the client is merely informed of the same. During the process of trading, the stock broker is allowed to provide incidental investment advice. However, in the present strategy, all the decisions were taken by the Noticee.
14. Moreover, the Noticee could not provide any evidence that the clients were even informed that the trades were being done in their sub-accounts on their behalf. On being asked for the call recordings, the Noticee clearly stated that it "*was unable to produce the same.*"
15. In a normal broking activity, a client instructs the broker regarding the trading of his shares. In the present case, the Options Maxima Strategy was formulated by the Noticee and offered to 749 clients of the Noticee, of which 640 clients opted for the same. On perusing the terms and conditions of the Strategy, it is observed that minimum unit of required margin was either 25 lakh cash or 40 lakh worth of securities was mandatory to qualify for the strategy. Hence, we can conclude that the strategy was marketed only to high networth individuals so that more exposure can be taken and the chance of earning more brokerage is heightened.
16. Along with its Reply to SCN, Noticee had produced KYC of a client who had opted for Optima Maxima and KYC of a client who had not opted, to demonstrate different set of documents, terms and conditions etc.
17. Noticee has claimed that before executing any trade under Option Maxima on behalf of its clients, it used to call and secure the consent of the respective client. However, it could not produce any evidence to substantiate its claim. In order to ascertain the same, I have relied on the statement of the client whose KYC was



produced before me by the Noticee (as the Client of Option Maxima). The client stated that he does not remember having subscribed to any such strategy.

18. The undersigned had contacted this client and he confirmed that he was not aware of any such strategy. The same was orally informed to the Noticee during the personal hearing held on September 22, 2017. The Noticee did not have any comments to offer. This, once again, shows that the clients were not involved in the execution of trades in the strategy and the Noticee was carrying out discretionary PMS through the strategy.
19. Upon perusing the trade details of the said client, I have noted that there are several trades under this strategy in this client's code (902722A). This Suffix of A to the client code signifies that this client is the client of Optima Maxima Strategy. Noticee in its reply has claimed that Option Maxima was not a scheme but in the nature of research calls/recommendations which were shared to the clients. Going by the latest submission of the Noticee, I note that, had Option Maxima was just recommendation calls then in that scenario the requirement of securing consent of clients with detailed terms and conditions, separate sub account with client code, maintenance of minimum margin amount, centralized dealing location, placing of derivative experts at the central location and provision of incremental brokerage linked to profit made would not have arisen and adopted by the Noticee
20. Although the clients of this strategy were located all throughout the country, all trades were executed through the Chennai office of the Noticee. The Noticee submitted that it was so because Chennai being the head office possessed most experienced personnel of the Noticee who were proficient in advising and assisting in matters related to derivatives market. However, generally in a normal broking activity no such specialists are required to execute the trades of the clients. The broker merely acts on the instruction of the clients. As experienced and proficient personnel are essential in execution of strategy signifies that it was not a mere broking activity.
21. In the month of September 2010, when the clients suffered losses due to unidirectional and rapid upward movement of the NIFTY index, the Noticee had decided to wind up all the open position in the strategy and compensate 317



clients who suffered losses to the tune of ₹ 103.24 crores. The Noticee submitted that the decision to reimburse the losses was undertaken to protect the larger enterprise and brand value. I further rely on the statement of the Noticee that Option Maxima was not a scheme but in the nature of research calls/recommendations which were shared to the clients, in that case, what was the need for the Noticee to compensate all the clients who had suffered losses, if Noticee's only role was just providing recommendations. In my opinion, as the Noticee was taking all the investment decision on behalf of the clients and hence it was under an obligation to compensate the clients who suffered losses due to its trading decisions to protect their client base and avoid complaints of investors

22. As per Portfolio Manager Regulations 1993 "Portfolio Manager is any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the client, as the case may be ."

23. In the current scenario ,Noticee did not have any agreement with its clients to acts as their portfolio manager, as it was demonstrated and accepted that Noticee was advising its clients, providing incidental advice is allowed in Broker Regulations, however, I note that Noticee was the one who was directing its clients as well, i.e., it was the one who was taking the trading decision based on its expert team (centrally located), ticket size was almost similar as that prescribed under SEBI Portfolio Manager Regulations.

24. In view of the above, I find that the allegation of violation of section 12 of the SEBI Act read with clauses A (3) and A (5) of Code of Conduct for brokers specified in Schedule II read with Regulation 9 of the Brokers Regulations by the Noticee stands established and the Noticee is liable for penalty under section 15HB of SEBI Act which reads as follows:

Penalty for contravention where no separate penalty has been provided

15HB. Whoever fails to comply with any provisions of this Act, the rules or the regulations made or directions issued by the Board there under 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.

25. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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... ”.

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

Section 15J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15, 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.

27. I find that the investigation did not bring out the disproportionate gain or unfair advantages to the Noticee and loss caused to investors. The default cannot be said to be repetitive in nature.

ORDER

28. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I(2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticee stand established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, I, hereby impose monetary penalty of ₹ 10,00,000/- (Rupees Ten Lakh only) on the Noticee.

29. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - II [**EFD-DRA-2**] SEBI Bhavan, Plot No.C4-A, ' G' Block, Bandra



Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 OR 2) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty(ies) levied by Adjudication Officer :-

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

30. The Noticees shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

31. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	Department of SEBI	Name of Intermediary/other Entity	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of payment (including the period for which payment was made e.g Quarterly, annually)	Bank Name and Account Number from which payment is remitted	UTR No



32. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date : November 23, 2017
Place : Mumbai

SAHIL MALIK
ADJUDICATING OFFICER

