

**Before the
Member and Core Settlement Guarantee Fund Committee
("MCSGFC"/"Committee")
of
National Stock Exchange of India Limited
Exchange Plaza, Bandra-Kurla Complex, Bandra East, Mumbai – 400 051
held on July 25, 2022
In the matter of the Trading Member M/s. Profitmart Securities Private Limited**

QUORUM

Ms. Mona Bhide	- Chairperson
Mr. K Narasimha Murthy	- Committee Member
Ms. Anuradha Rao	- Committee Member
Mr. Ranganayakulu Jagarlamudi	- Committee Member

ALSO PRESENT:

Ms. Priya Subbaraman	- Chief Regulatory Officer
Dr. Dinesh Kumar Soni	- Senior Vice President – Regulatory
Mr. Suresh Nair	- Vice President- Regulatory- Enforcement

BACKGROUND

1. **M/s. Profitmart Securities Private Limited ("Noticee"/"Profitmart")** is a Trading Member registered with the National Stock Exchange of India Limited ("**Exchange**"/"**NSEIL**") and enabled for trading in the Capital Market ("**CM**"), Futures and Options ("**F&O**") segments since June 2012, and Currency Derivatives ("**CD**") segment since February 2013.
2. The Exchange conducted a regular inspection of the Noticee's books of accounts and records covering the period September 1, 2020, to August 31, 2021, in September 2021, and December 2021. Post-inspection, the Exchange issued a show-cause notice bearing reference number NSE/INSP/CMFOCDS/REG/21-22/14556/2021-7822, dated May 9, 2022 ("**SCN-1**"), for the observed non-compliance with the regulatory provisions. The Noticee, vide letter dated June 7, 2022, replied to the SCN-1.
3. Further, the Exchange scrutinized the Noticee's records pertaining to the inspection and supervision of its Authorized Persons ("**APs**"). Post-scrutiny, the Exchange issued a show-cause notice bearing reference number NSE/COMP/CMFOCDS/21-22/14556 dated June 14, 2022 ("**SCN-2**"), for the observed non-compliance with the regulatory provisions. The Noticee failed to reply to said SCN-2 till the Committee Meeting held on June 27, 2022.
4. The Exchange granted the Noticee an opportunity for a personal hearing before the Committee in its meeting on June 27, 2022. Mr. Nayan Bhandari, Director; Mr. Gaurav

Kothari, Compliance Officer; and Mr. Nitin Vora, Asst. Compliance Manager appeared on behalf of the Noticee.

5. Based on the Noticee's oral submissions before the Committee, analysis of its reply to the SCN-1 dated June 7, 2022, vis-à-vis the documents provided in support of its contentions, and the Exchange records for observed non-compliances in the SCN-2, the Committee passed an interim order dated July 12, 2022 ("**Interim Order**") in the interest of Noticee's clients, investors, and the securities market.
6. The said Interim Order directed the Noticee:
 - a. To reply to SCN-2 dated June 14, 2022, within 7 days from the date of the Interim Order.
 - b. To submit satisfactory documentary evidence to dismiss the alleged violation/observations pertaining to assured return provided by the Noticee to its clients within 15 days from the date of the Interim Order.
 - c. To stop registration of new clients in all segments with immediate effect until further directions of the Committee.
 - d. To stop registration of new APs with immediate effect until further directions of the Committee.
 - e. The Committee advised the Exchange to conduct a forensic audit of the Noticee's books and records for assured returns provided by the Noticee/its APs.
7. The Noticee vide letter dated July 13, 2022, replied to SCN-2.
8. Aggrieved by the Committee's Interim Order, the Noticee filed an appeal before Hon'ble Securities Appellate Tribunal, Mumbai ("**SAT**"), contending that the Committee's direction prohibiting the Noticee from registering new clients and APs is arbitrary, harsh, and excessive, as the Committee gave no finding as to how the authorized person viz. Incofina was engaged in an assured return scheme.
9. Hon'ble SAT vide its order dated July 19, 2022, refused to interfere with the Interim Order and opined that the alleged violation/observation of collecting money and promising assured returns to clients by the Noticee's AP is a serious charge which the Exchange *prima-facie* proved through the advertisement carried out by the Noticee's AP, for which the Noticee gave no cogent reply at the time when the Committee considered the matter. Thus, the Committee was justified in passing an Interim Order.
10. Given the reply filed by the Noticee for violations observed in SCN-2, vide letter dated July 13, 2022, the Hon'ble SAT further directed the Exchange to grant the Noticee another

personal hearing before the Committee on July 25, 2022, and to pass a final order in the said matter within two weeks thereafter.

11. In its reply dated July 13, 2022, the Noticee requested the Exchange to provide the details of 8 investors' complaints as mentioned in SCN-2. The Exchange provided the same in its email dated July 22, 2022. The Noticee filed an additional reply to SCN-2 vide its letter dated July 23, 2022.
12. Pursuant to the order of the Hon'ble SAT, The Exchange placed the matter before the Committee for final decision/order. A personal hearing was granted to the Noticee in its meeting on July 25, 2022.
13. The Noticee submitted an additional reply vide email dated August 5, 2022.

INSPECTION OBSERVATIONS/ALLEGED VIOLATIONS

14. The observations/alleged violations mentioned in the SCNs are summarized hereunder:

SCN-1

- 14.1. Engagement as a principal in business other than securities involving personal financial liability by providing:
 - a. Regular payment of Rs.5,555/- to 7 clients in 24 instances involving Rs.1,33,320/-
 - b. Regular fixed payments to 8 clients in 68 instances involving Rs.91,24,000/-
- 14.2. Margin trading facility provided in unapproved securities in 19 out of 205 scrips selected for sample scrutiny (9.27%) involving Rs.76,98,676/-
- 14.3. Shortfall of clients' securities in 3 out of 1124 instances selected for sample scrutiny as of August 31, 2021, involving Rs.10,50,846/-
- 14.4. Incorrect reporting of EOD and Peak margin collected from clients involving Rs.4,80,568/-, and Rs.25,29,267/-, respectively
- 14.5. Non-settlement of clients' funds and securities in 5 out of 200 instances (2.5%) involving Rs.3.46 crores and delay in settlement of clients' funds and securities in 5 out of 200 instances (2.5%)
- 14.6. Non-closure/ winding up 1 client collateral account by August 31, 2020
- 14.7. Incorrect data reported in the weekly holding statement as of August 31, 2021, in 9 instances, involving Rs.13,48,540/-

- 14.8. Incorrect data reported towards client-level cash and cash equivalents balance in 3 instances as of August 31, 2021, involving a difference of Rs.4,00,999/-
- 14.9. Mismatch as per Noticee's back-office vis-à-vis Exchange's UCC database of client's mobile numbers in 142 instances and clients' email ids in 140 instances.
- 14.10. Funding of client transactions in 8 out of 35 instances involving Rs.1,75,39,844/-

SCN-2

- 14.11. Failure to report the inspection of the APs and records of operations carried out by APs and take appropriate necessary action.

REGULATORY PROVISIONS

15. At the outset, it is appropriate to refer to the relevant regulatory provisions alleged to have been violated by the Noticee, extracts of which are reproduced below:
- 15.1. The Noticee paid fixed/regular payments to its clients and hence engaged as a principal in business other than securities involving personal financial liability. Thus, the Noticee has acted in violation of the provisions of the following Rules of the Exchange:
- a. Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957
- (3) *No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if—*
- (f) *he engages either as principal or employee in any business other than that of securities [or commodity derivatives] except as a broker or agent not involving any personal financial liability.*
- 15.2. The Noticee provided a margin trading facility to clients in unapproved securities. Thus, the Noticee has acted in violation of the provisions of the following Circular of the Exchange:
- a. Exchange Circular No. NSE/COMP/35125 dated June 15, 2017
- Securities Eligible for Margin Trading*
- 3. Equity Shares that are classified as 'Group I security' as per SEBI Master Circular No. SEBI/HO/MRD/DP/CIR/P/2016/135 dated December 16, 2016, shall be eligible for margin trading facility.*

15.3. The Noticee had a shortfall of clients' securities involving Rs.10,50,846/- as of August 31, 2021. Thus, the Noticee has acted in violation of the provisions of the following Circulars of the Exchange:

- a. Exchange Circular No. NSE/INSP/29096 dated March 11, 2015

Members are advised to ensure that the funds & securities available in the client bank/s and client beneficiary account/s together with balances available with clearing Member and funds with clearing corporation are not less than the funds and securities payable to the client at all times

15.4. The Noticee incorrectly reported the margin collected from clients to the Exchange. Thus, the Noticee has acted in violation of the following Regulation and circulars of the Exchange:

- a. Regulation 3.9 of NSEIL Regulations (CM Segment) and Regulation 3.10 of NSEIL Regulations (F&O Segment)

The Trading Members shall have the right to demand from its constituents the margin deposit which the Member has to provide under these Trading Regulations in respect of the business done by the Members for such constituents.

- b. Exchange Circular No. NSE/INSP/10367 dated February 28, 2008

All Clearing Members and Trading Members in the F&O segment are required to collect upfront initial margins from all the Trading Members/Constituents whose transactions are settled by them and also to report on a daily basis, details in respect of such margin due and collected.

- c. Exchange Circular No. NSE/INSP/43069 dated December 31, 2019

Exchange issued the clarification in the form of frequently asked questions on margin collection and reporting.

What margins are required to be collected by Trading Members from clients in Capital & Derivatives Segment?

- A. *Capital Market Segment*

In capital segment, Trading Members (TM) are required to mandatorily collect VaR margins and Extreme loss Margin (ELM) from their clients on an upfront basis. Other margins such as Mark-to-market margin (MTM), delivery margin, special/additional Margin or such other margins as may be prescribed from time to time, shall be collected within 'T+2'

working days from their clients. It must be ensured that VaR margins and ELM are collected in advance of trade and other margins are collected/paid as soon as margin calls are made by the Stock Exchanges.

B. F&O segment

In the F&O segment, it is mandatory for Trading Members to collect initial margin, net buy premium, delivery margin & exposure margin from respective clients on an upfront basis. It must be ensured that all upfront margins are collected in advance of trade. Mark-to-market losses (MTM) shall be collected from clients by T+1 day.

C. Currency Derivative segment

In case of Currency Derivatives segment also, it is mandatory for Trading Members to collect initial margin, net buy premium and extreme loss margins from their client on an upfront basis. It must be ensured that all upfront margins are collected in advance of trade. The Mark-to-market losses shall be collected from clients by T+1 day. However, in case of currency future contracts, final settlement amount shall be collected by T+2 day.

d. Exchange Circular No. NSE/INSP/45072 dated July 21, 2020

2. *In order to align and streamline the risk management framework of both cash and derivatives segments, with respect to collection of margins from the clients and reporting of short-collection/non-collection of margins, SEBI, vide Circular no. CIR/HO/MIRSD/DOP/CIR/P/2019/139 dated November 19, 2019, inter alia, required the Trading Members (TMs) / Clearing Members (CMs) in cash segment as well to mandatorily collect upfront VaR margins and ELM from their clients.*

Framework to enable verification of upfront collection of margins from clients in cash and derivatives segments

- (ii) *The client wise margin file (MG-12/13) provided by the CCs to TMs/CMs shall contain the EOD margin requirements of the client as well as the peak margin requirement of the client, across each of the intra-day snapshots.*
- (iii) *The Member shall have to report the margin collected from each client, as at EOD and peak margin collected during the day, in the following manner:*

- a) *EOD margin obligation of the client shall be compared with the respective client margin available with the TM/CM at EOD.*

AND

- b) *Peak margin obligation of the client, across the snapshots, shall be compared with respective client peak margin available with the TM/CM during the day.*

Higher of the shortfall in collection of the margin obligations at (a) and (b) above, shall be considered for levying of penalty as per the extant framework.

- 15.5. The Noticee failed to settle the clients' funds and securities. Thus, the Noticee has acted in violation of the provisions of the following circulars of the Exchange:

- a. Exchange Circular No. NSE/INSP/13606 dated December 3, 2009

Unless otherwise specifically agreed to by a client, the settlement of funds/securities shall be done within 24 hours of the pay-out. However, a client may specifically authorize the stockbroker to maintain a running account subject to inter alia the following condition:

The actual settlement of funds and securities shall be done by the broker at least once in a calendar quarter or month, depending on the preference of the client.

- b. Exchange Circular No. NSE/INSP/33276 dated September 27, 2016

8.1.1 The stockbroker shall ensure that there must be a gap of a maximum of 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.

- 15.6. The Noticee failed to close/wind up all existing demat accounts marked as client collateral accounts as of August 31, 2020. Thus, the Noticee has acted in violation of the provisions of the following Circular of the Exchange:

- a. Exchange Circular No. NSE/INSP/45191 dated July 31, 2020

The TM / CM shall be required to close all existing de-mat accounts tagged as 'Client Margin / Collateral' by August 31, 2020

- 15.7. The Noticee had reported incorrect data in the weekly holding statements. Thus, the Noticee has acted in violation of the provisions of the following Circular of the Exchange:

- a. Exchange Circular No. NSE/INSP/39855 dated January 3, 2019

All Members were advised to comply with the requirement and upload the holding statement data electronically for all calendar days of the reporting week on or before the next four trading days of subsequent week through the Inspection module in the Member portal. The procedure for submission of the data was given in Annexure-1 of this circular.

- 15.8. The Noticee uploaded incorrect data towards client-level cash and cash equivalents to the Exchange. Thus, the Noticee has acted in violation of the provisions of the following Circular of the Exchange:

- a. Exchange Circular No. NSE/INSP/43926 dated March 23, 2020

1. *Day-wise upload of Client Level Cash & Cash Equivalent Balances on a weekly basis for all calendar days of that week except Sunday (i.e. Monday to Saturday);*
2. ...

The aforesaid data / details shall be required to be submitted on or before the next four trading days of the subsequent week.

- 15.9. The Noticee incorrectly submitted the data pertaining to the mobile number and email addresses of clients to the Exchange. Thus, the Noticee has acted in violation of the following Circulars of the Exchange:

- a. Exchange Circular No. NSE/INVG/21841 dated October 4, 2012

Trading members are requested to review the details of the clients uploaded on UCI Online pertaining to their mobile number and email address and update the same wherever necessary.

Trading Members are hereby requested to take utmost care while uploading client details including mobile number and email address on UCI- online

- 15.10. The Noticee granted further exposure to clients having debit balances for over five consecutive days. Thus, the Noticee has acted in violation of the provisions of the following Circulars of the Exchange:

- a. Exchange Circular No. NSE/INSP/33276 dated September 27, 2016

- 2.6. *Stock brokers shall not grant further exposure to the clients when debit balances arise out of the client's failure to pay the required amount and*

such debit balances continues beyond the fifth trading day, as reckoned from the date of pay-in.

15.11. The Noticee failed to report the inspection of the APs and records of operations carried out by APs and take appropriate necessary action. Thus, the Noticee acted in violation of the provisions of the following Circulars of the Securities and Exchange Board of India and the Exchange:

a. SEBI Circular No. MIRSD/ DR-1 /Cir-16/09 dated November 6, 2009

7. Obligations of Stockbroker

(e) Stockbroker shall conduct periodic inspection of branches assigned to authorized persons and records of the operations carried out by them.

(g) On noticing irregularities, if any, in the operations of authorized person, stockbroker shall seek withdrawal of approval, withhold all money due to authorized person till resolution of investor problems, alert investors in the location where authorized person operates, file a complaint with the police, and take all measures required to protect the interest of investors and market.

b. Exchange Circular No. NSE/INSP/42448 dated October 18, 2019

i. Every Trading Member shall be required to inspect every year at least 30% of its active Authorized Persons/Branches and also ensure that each active AP/Branches is inspected at least once in every three years. For this purpose, an active AP/ Branches would mean one who has executed even a single transaction during the financial year and is engaged in servicing the clients.

ii. APs/Branches meeting any of the below criteria shall be inspected annually, irrespective of when the last inspection was carried out:

- APs/Branches with more than 500 registered clients across Exchanges.*
- APs with more than 20 trading terminals and Branches with more than 50 trading terminals, across all segments/Exchanges.*
- APs/Branches against which more than 3 complaints have been received during the previous year.*

In case of any inputs/alerts about any suspicious transactions/dealing/assured returns etc. by an AP or a Branch, Members

shall carry out an immediate inspection, irrespective of when the last inspection was carried out and initiate appropriate action.

Indicative scope of branch /AP inspection by members

11. *The Authorised Person/Branch is not involved in any fund-based activities / collecting deposits from investors/dabba trading / chit funds or any other such schemes.*

12.....

13.....

14. *The AP/Branch is not involved in accepting deposits from the public and giving assured returns.*

15. *Advertisements soliciting business are not issued by the Authorised Person/Branch in newspapers / pamphlets / journals / magazines etc. without appropriate approvals."*

c. Exchange Circular No. NSE/COMP/50030 dated October 21, 2021

b) Inspections undertaken during a particular quarter shall be reported within one month from the end of the said quarter. For instance:

<i>Inspections undertaken during the FY</i>	<i>Due date of reporting</i>
<i>Inspections done during the Quarter-1</i>	<i>July 31, XXXX</i>
<i>Inspections done during the Quarter-2</i>	<i>October 31, XXXX</i>
<i>Inspections done during the Quarter-3</i>	<i>January 31, XXXX</i>
<i>Inspections done during the Quarter-4</i>	<i>April 30, XXXX</i>

c) In the first phase Members are required to report details of all inspections undertaken during FY 2020-21 and for quarter-1 & 2 of FY 2021-22 latest by November 30, 2021. Subsequently all inspections shall be reported in the manner stated in para 2 (b) above from quarter 3 FY 2021-22 onwards.

Trading Members are required to report any incidence observed by them, including assured returns or any unauthorized schemes operated by the AP, to the Exchange, within 2 working days.

PRESENT PROCEEDINGS BEFORE THE COMMITTEE

MCSGFC meeting held on June 27, 2022

16. The Noticee was granted a personal hearing before the Committee in its meeting on June 27, 2022. Mr. Nayan Bhandari (Director), Mr. Gaurav Kothari (Compliance Officer), and Mr. Nitin Vora (Asst. Compliance Manager) appeared on behalf of the Noticee and made the following oral submissions before the Committee:

a. Engagement as a principal in business other than securities involving personal financial liability:

The fund pay-outs were based on the clients' request and, therefore, within the framework of Exchange guidelines and regulations.

b. Margin trading facility provided in unapproved securities

The Exchange observations are incorrect, and all the securities are from the approved list.

c. Failed to report the inspection of the APs and records of the operations carried out by the APs:

The Noticee has currently reported the inspection of APs to the Exchange.

d. Failure to monitor the activities of APs

The website does not belong to its AP, and the same was created by some unknown person having no connection with its AP. The Noticee expressed its inability to file a police complaint in the said matter due to insufficient documents.

MCSGFC Meeting held on July 25, 2022

17. Pursuant to the directions of Hon'ble SAT, the Noticee was granted an opportunity of personal hearing before the Committee in its meeting on July 25, 2022. Mr. Simil Purohit (Authorised Representative), Mr. Robin Shah (Authorised Representative), Mr. Uday Singh Kashid (Authorised Representative), Mr. Ayush Singh (Authorised Representative), Mr. Nayan Bhandari (Director), Mr. Rakesh Sonawane, (Director), Mr. Niranjan Mahajan (Director), Mr. Nitin Bora (Compliance Officer), Mr. Yesudasan RK (Director), Mr. Gaurav Kothari (Compliance Officer), Mr. Prashant Mayekar (Authorised Representative) appeared on behalf of the Noticee and made the following oral submissions before the Committee:

a. Failure to submit the inspection reports on time

- i. Noticee admitted the violation concerning the delay in submission of reports of inspection of AP conducted on every quarter attributed the same to the due date mentioned on the Exchange portal as June 30, 2021.
- ii. It stated that delay in reporting the inspection report is not tantamount to the non-compliance regarding the inspection of APs.

- iii. The Exchange Circulars do not expect the Trading Member to inspect all APs in a single financial year. It requires the Trading Members to inspect only 30% of its total APs in a year which the Noticee has complied.
- iv. The inspections conducted by it are by way of surprise visits, and the Noticee will try to gather evidence of travel to the place of inspection to prove that the same was indeed conducted by it duly. The Noticee will submit the same to the Exchange within 2-3 days.
- v. Further, the Exchange's contention that submitting the report after the issuance of SCN-2 by the Exchange is an afterthought is incorrect, as conducting an inspection of over 1,000 APs in 4 days is not feasible.

b. Failure to monitor the activities of APs/ 8 investor complaints against Noticee APs.

- i. The Noticee onboarded Incofina as its AP on April 17, 2022; thus, there was no reason to inspect the AP in the current financial year, i.e., within 3 months from the date of its onboarding.
- ii. The basis and source of the document on which the Exchange has relied are uncorroborated. The Exchange has not established any link of the documents and particulars mentioned in it with the Noticee or its AP. The Noticee stated that the particulars mentioned in the documents annexed to SCN-2, including the website, do not belong to it or its AP.
- iii. Further, none of the 8 investor complaints pertain to AP Incofina.
- iv. Post receipt of the SCN, as a precautionary measure, debarred the business of the said AP, Incofina, and filed a police complaint as required.
- v. There are 7 investor complaints against the Noticee and not 8, as mentioned by the Exchange, as the Exchange repeated the complaint of Prasad Shimpi twice.
- vi. The complaint pertaining to Mr. Prasad Shimpi involved a claim of Rs.25 lakhs but was settled at 2 lakhs, and the complaint pertaining to Mr. Vivek Dixit involved a claim of Rs.95,000/- and was settled for Rs.35,000/-.
- vii. The complaint pertaining to Ms. Minimon Yadav (Plannify Complaint) was filed by a disgruntled employee and dismissed by the GRC as the GRC is not the appropriate forum for addressing the grievance.
- viii. The complaint of unauthorized trade pertaining to Ms. Nidhi Srivastava was dismissed by GRC due to want of merit, and the claim of Mr.Utkarsh Deshmukh

was dismissed due to appropriate evidence of authorization provided by the Noticee's client.

- ix. The complaint pertaining to Ms. Reshma Kamble involved unauthorized trades of APs husband and not the AP. However, as a precautionary measure, it stopped the APs business to ensure compliance.
 - x. GRC dismissed the complaint of Ms. Malati Ghosh as the unauthorized trades in the said matter were caused due to the client sharing its password and personal details with a third party and not with the Noticee's AP.
 - xi. The 8 complaints involving a total claim of Rs.43,43,000/- were settled for Rs.2,35,000/-, which shows that the complaints were not genuine. Since anyone can file complaints, it is incorrect to assume that the complaints amount to non-compliance. Further, the Noticee settled the said complaints to avoid litigation and nuisance. The Complainants finalized all the claims without further appeal or arbitration.
 - xii. Further, the fact that Planiffy's director shared a video offering assured return was not a part of the show cause notice and thus, can't be argued.
 - xiii. The representations made and the observations recorded by the Exchange do not warrant such a harsh order; thus, the Committee may take a lenient view equitably.
- c. Regular payment of Rs.5,555/- to 7 clients in 24 instances involving Rs.1,33,320/-
- The said violation emanates from a misinterpretation of data by the Exchange. The same pertains to brokerage charged by the Noticee from its clients. The Exchange has erroneously interpreted some income entries as assured return entries, which led to the issuance of the SCN-1.
- d. *Regular fixed payments to 8 clients in 68 instances involving Rs.91,24,000/-*
- i. The payments in the reported instances were made on explicit requests raised by the clients on the Noticee's portal and were confirmed post-facto.
 - ii. Further, there is no specific pattern in the payments made to clients in the reported instances; thus, it is incorrect to assume that the exact amounts to assured returns were provided to clients. Further, the payments are made from clients' bank accounts, not from the Noticee's accounts. Thus, there is no intermingling of funds. The Exchange has also not claimed any violation for non-settlement of clients' funds. Therefore, the Noticee has duly settled all clients' accounts.

- iii. The Noticee confirmed that the portal on which Noticee received written requests from clients for the said sums is active and can be shared with the Exchange instantly.

CONSIDERATION AND FINDINGS

18. The observations/alleged violations, the reply of the Noticee, and the findings of the Committee are as under:

17.1 **Engagement as a principal in business other than securities involving personal financial liability**

- a. The Exchange verified the combined ledgers of the Noticee's clients. Upon verification, the Exchange observed certain patterns in payments made to clients as under:

Regular payment of Rs.5,555/- to clients

- i. The Noticee regularly paid a fixed sum of Rs.5,555/- to 7 out of 25 clients selected for sample scrutiny in 24 instances involving a total payment of Rs.1,33,320/-.
- ii. The clients have fund balances ranging from Rs.14,628/- (debit) to Rs.4,85,48,313/- (credit) on the previous day of the payment.

Regular fixed payments to clients

- i. The Noticee regularly paid a fixed sum to 8 out of 25 clients selected for sample scrutiny in 68 instances involving a total payment of Rs.91,24,000/-.
- ii. The clients have fund balances ranging from Rs.97,752/- (debit) to Rs.5,27,54,820/- (credit) on the previous day of the payment.

The afore-stated payment patterns indicate that the Noticee indulged in providing regular fixed pay-outs to its clients. Thus, the Noticee engaged as a principal in business other than securities involving personal financial liability.

- b. In reply to the observation/alleged violation, the Noticee has stated that:
 - i. The Exchange did not communicate the violation during discussions on the preliminary observation sheet. Thus, the Exchange denied it the initial right to communicate and explain its understanding of the said observations to the Exchange. It would have been appreciated and

resolved the observations if the Exchange informed the same before issuing the show cause notice.

ii. *Regular payment of Rs.5,555/- to 7 clients in 24 instances involving Rs.1,33,320/-:*

a) The reported instances pertain to prepaid brokerage charged to clients at the rate of Rs.5,555/- per month; thus, no violation arises. The prepaid brokerage charged is within the ambit of Exchange rules and regulations.

b) Further, no pay-out has been made to clients. There are journal voucher entries in its books but no bank payment entry. The Noticee has provided ledgers for all 7 clients reflecting that no pay-outs have been made.

c) It requested that the said observation be dropped.

iii. *Regular fixed payments to 8 clients in 68 instances involving Rs.91,24,000/-*

a) The reported instances pertain to clients wherein the pay-outs were made for the trades undertaken or for the sums received during the said period. No journal voucher credit entries have been passed in the client ledgers that depict credits given or pay-outs made to clients.

b) The said payments made by it were within the Exchange guidelines and regulations. The reported pay-outs include instances wherein different amounts were paid to a client at different times, which defeats the purpose of fixed pay-out. Further other pay-outs were also made to clients besides the reported instances. Thus, picking a specific pattern from the payments made to clients legally, as per their needs, and excluding the other instances of payments made during the period is unjustified. Noticee has provided the details of pay-outs made during the inspection period.

c) Further, it has indulged in no wrongdoing by honoring the request made by its clients as per their needs and within the law.

d) Hence the client-wise payment done for the same amount is purely based on the client's need. It honored the request in true spirit and the client's interests.

e) It has complied with the provisions of law and has not indulged as a principal in any business other than that of the securities market involving personal financial liability.

c. The Committee finds as under:

Regular payment of Rs.5,555/- to 7 clients in 24 instances involving Rs.1,33,320/-:

- i. The Noticee has contended that the said observations pertain to debit entries in the journal voucher for prepaid brokerage charged to the clients and do not pertain to payments made to clients as a regular payment.
- ii. Upon verification of the client ledgers, it was found that the Noticee's claim is correct. The said entries are not bank payment entries. Thus, the said observation/alleged violation does not persist.

Regular fixed payments to 8 clients in 68 instances involving Rs.91,24,000/-

- iii. The Noticee has contended that it made the payments against the trades undertaken or the amounts received from clients. Further, different amounts were paid to clients on several other occasions besides the reported instances. Thus, it made no regular fixed payments to clients is not acceptable since, in the case of 8 clients, the pattern of potential monthly fixed pay-outs has been observed.
- iv. Upon verification of Noticee's ledgers, it was observed that Noticee made the fixed payments periodically. The credit balances in the client's accounts as on the pay-out were higher than the fixed pay-out amount. Thus, the said pay-out pattern indicates that the Noticee provided its client a regular fixed fund pay-out.
- v. Upon perusal of the entries in the client account pertaining to M/s. Auroville Investments Pvt. Ltd. (15750324), on a sample basis, it was observed that the Noticee gave fixed periodic pay-out of Rs.5,00,000/- to the client on February 5, 2021, March 12, 2021, April 9, 2021 and June 7, 2021, while the client's balance as on the said dates were Rs.5.13 crores, Rs.5.17 crores, Rs.5.12 crores, and Rs. 5.28 crores, respectively.
- vi. Upon perusal of entries in the client account pertaining to Sanila Choudhary (28949006) on a sample basis, it was observed that a fixed periodic pay-out of Rs.1,00,000/- was given to the client on March 30, 2021, May 12, 2021, June 16, 2021, and July 13, 2021, while the client's

balance as on the said dates was Rs.21.24 lakhs, Rs.28.72 lakhs, Rs.31.18 lakhs, and Rs.45.67 lakhs, respectively.

- vii. Upon perusal of entries in the client account pertaining to Akash Rajkumar Chaphekar (23180070) on a sample basis, it was observed that a fixed periodic pay-out of Rs.12,000/- each was given to the client from January 2021 to May 2021, while the client's balance as on the said dates was in the range of Rs.4.25 lakhs to Rs. 4.99 lakhs. The client then invested Rs. 46 lakhs on June 25, 2021, post which the Noticee paid Rs.1,50,000 for the period from July 2021 to September 2021, while the client's balance as on the said dates was in the range of Rs.55.83 lakhs to Rs.58.88 lakhs.
- viii. Upon perusal of entries in the client account pertaining to K R Veeresh HUF (20060022) on a sample basis, it was observed that a fixed periodic pay-out of Rs.1,80,000/- was given to the client on January 21, 2021, January 25, 2021, February 5, 2021, March 3, 2021, and May 28, 2021, while the client's balance as on the said dates was Rs. 8.95 lakhs, Rs. 6.95 lakhs, Rs.17.95 lakhs, Rs.11.99 lakhs, and Rs.2.02 lakhs, respectively.
- ix. The Noticee follows running account settlement for the reported clients and thus is required to settle the client's accounts on a monthly/quarterly basis and at the clients' specific request. Trading Members are not permitted to act as banks where clients can park and withdraw their funds. The client funds lying with a Trading Member shall solely pertain to the respective clients' trading, margin, and/or settlement purposes. Upon verification of the pattern of payments made to clients in the reported instances, it was observed that a fixed payment was made to clients at regular intervals, which in the experience of the Exchange is an unusual pattern for Trading Members and hence, raises severe concerns for the security of funds of innocent clients lying at stake with the Trading Member. The same may cause detriment to the interest of the investors and prejudice the integrity of the securities market.
- x. Further, Noticee has claimed that payments were made to honor the client's requests and provided a document containing "Instruction No.", "Instruction Date Time" and "Source User ID" for the pay-out request received online from the clients. However, the same is unacceptable as there was no proof that the Noticee extracted the logs from the system/portal of the Noticee.
- xi. Further, the Noticee provided post-facto confirmation of June 2022, received from clients that the said amounts were not in the form of assured returns guaranteed to them but were withdrawn at their own will. However, the same is not acceptable as the said emails are for the

month of June 2022, which is post issuance of the SCN-1, and from the flow and pattern of communication, it is evident that it is an afterthought. In the absence of sufficient documentary evidence, the contention of the Noticee is not established conclusively.

- xii. Thus, the Noticee's contention is not acceptable, and the observations/alleged violation pertaining to providing regular fixed returns persists.
 - xiii. Rule 8 (3) (f) of Securities Contract (Regulations) Rules, 1957 provides that person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if he engages either as principal or employee in any business other than that of securities [or commodity derivatives] except as a broker or agent not involving any personal financial liability.
- d. The Committee's decision pertaining to engagement in business other than that of securities involving personal financial liability by periodic fixed payments to 8 clients in 68 instances is dealt with in Paragraphs 18 and 19 of this Order.

17.2 **Margin trading facility provided in unapproved securities**

- a. The Exchange verified the disclosures on the margin trading facility submitted by the Noticee to the Exchange. Upon verification, the Exchange observed that the Noticee provided a margin trading facility in unapproved securities in 19 out of 205 scrips selected for sample scrutiny (9.27%) involving Rs.76,98,676/-.
- b. In reply to the observation/alleged violation, the Noticee has stated that:
 - i. The said observation is incorrect as all the 19 reported instances pertain to approved securities as per the MTF provisions. Noticee has provided supporting documents depicting the same.
 - ii. The observation of the Exchange is based on the scrips' names, whereas the ISIN name, name change, BSE code, and other reasons are self-explanatory.
 - iii. Thus, there has been no wrongdoing at its end, and it has complied with the provisions of providing a margin trading facility only in approved securities.
 - iv. It also informed the Exchange about the same during their discussion on the preliminary observation sheet.

- v. The Noticee requested that it be relieved of the said observation as the same is incorrect.
- c. The Committee finds that:
 - i. The Noticee has denied the inspection observations and contended that all the 19 reported scrips are approved securities per the MTF provisions and that it has complied with all the provisions for providing exposure against approved securities.
 - ii. Upon verification, it was observed that 18 scrips/securities against which the Noticee granted exposure were classified as "Group I" securities for the margin trading facility. In the remaining 1 scrip, pertaining to CDSL, exposure was granted in other than "Group I" security of Rs. 1,446/-. Thus, the Noticee's contention is correct and justifiable for 18 scrips. Hence the violation is reduced to 1 scrip involving Rs. 1,446/-.
 - iii. However, considering the number of scrips and the amount involved, a lenient view may be taken.
- d. Given the findings above, the Committee directed that the Noticee be warned to ensure non-recurrence of the observation.

17.3 **Shortfall of clients' securities**

- a. The Exchange verified the weekly holding statement submitted by the Noticee vis-à-vis the demat account holdings. Upon verification, the Exchange observed that the Noticee had a shortfall of the client's securities in 3 out of 1124 instances selected for sample scrutiny as of August 31, 2021, involving Rs.10,50,846/-.
- b. In reply to the observation/alleged violation, the Noticee stated that:
 - i. The said instances pertain to clients who have short-received securities internally from the seller clients, which should not have been reported in the Noticee's weekly holding report submitted to the Exchange. But the same were inadvertently uploaded, thereby leading to the said difference.
 - ii. Further, the shortfall is reported in only 3 out of 1124 instances, amounting to 0.26% of the total instances verified.
 - iii. Thus, a lenient view may be taken considering the non-materiality of incorrect reporting, and the reasons cited.

- c. The Committee finds as under:
- i. The Noticee has attributed the shortfall to specific securities which were not received due to internal shortages which were inadvertently captured in the holding report generated by back-office software for submission to the Exchange.
 - ii. The Exchange vide an email dated June 24, 2022, requested the Noticee to provide an internal shortage file reported to the clearing corporation to substantiate its claim.
 - iii. The Noticee vide an email dated June 26, 2022, provided the internal shortage file. Upon verification, the Noticee's contention regarding the internal shortage of securities is found correct. However, the Noticee has incorrectly recorded these shares in their back-office records.
- d. Given the findings above, the Committee directed that no action is warranted in the said matter.

17.4 Incorrect reporting of margin collected from clients

- a. The Exchange verified the end of the day ("EOD") and peak margin requirement of the client vis-à-vis the funds and securities balances. Upon verification, the Exchange observed that the Noticee had incorrectly reported the data to the Exchange as under:
- i. EOD margin collected from clients was incorrectly reported in 3 out of 225 instances, involving Rs.4,80,568/- (1.33%)
 - ii. Peak margin collected from clients was incorrectly reported in 3 out of 225 instances, involving Rs.25,29,267/- (1.33%)
- b. In reply to the observation/alleged violation, the Noticee stated that:
- i. It has high compliance criteria concerning margin collection and reporting. It collected the requisite EOD margin and Peak Margin in all the reported instances.
 - ii. There is no incorrect reporting towards EOD margin (involving Rs.4,80,568/-). However, it appears so due to reasons like M2M collected on T+2-day, pledge collateral value not considered, etc.
 - iii. Further, there is no incorrect reporting towards Peak margin reporting (involving Rs.25,29,267/-). It appears to be so because of reasons like

non-consideration of all pledge and EPI securities in valuation, incorrect consideration of peak balance, etc.

- iv. Noticee has provided detailed working files in support of its contentions and has requested that it be relieved of the said observation.
- c. The Committee finds as under:

EOD Margin –

- i. *2 clients (50660990 and 13130049) involving Rs.2.66 lakhs:*

Upon verification, the Noticee's contention that the EOD margin included MTM margin collected on T+2 day was found to be correct for client code 13130049. Further, the Noticee reported a shortfall of initial margin to the Exchange / Clearing Corporation for client code 50660990. In view of the same, the observation/alleged violation does not persist in the said instances.

- ii. *1 instance (12010900) involving Rs.2.14 lakhs:*

Upon verification of the details of pledged securities along with the demat statement provided by the Noticee, its contention that the benefit for securities pledged for margin collection was not extended to it by Exchange was found to be correct. Thus, post considering the value of securities pledged by the client the observation/alleged violation does not persist in the said instance.

Peak Margin –

- iii. *2 Clients (72420016 and 40600002) involving Rs.21.44 lakhs*

The Exchange verified the contention of the Noticee that the Exchange has considered incorrect peak ledger balance. Upon verification of the cash and cash equivalent submission and client ledgers provided by the Noticee, it was observed that the ledgers shared during inspection mentioned the debit entries before the credit entries. In contrast, the ledgers shared along with the reply to the SCN-1 mentioned credit entries before the debit entries. Thus, there were irregularities in the peak ledger balances considered at the time of inspection and the balance considered by the Exchange while verifying the balance claimed by the Noticee in its reply to SCN-1. After considering the balances as per the ledgers shared by the Noticee and the ledger provided in reply to the SCN-1, the observation/alleged violation does not persist in the said instances.

iv. *1 client (28946066) involving Rs.3.84 lakhs*

Upon verification of the details provided by the Noticee of securities pledged and those given for EPI, its contentions that the benefit for securities given for EPI and those pledged were not extended to the Noticee were not conclusively established. The Exchange, vide an email dated June 23, 2022, requested the Noticee to provide the demat transaction statement for securities given for EPI along with the EPI success file and demat holding statement for securities pledged with Noticee for margin to support its contention.

The Noticee, vide an email dated June 26, 2022, provided the requested documents. Upon verification of the client's demat account, it was observed that its client pledged securities amounting to Rs.21.42 lakhs. Thus, the Noticee's contention was found to be correct. Thus, the violation does not persist in the said instance.

- d. Given the findings above, the Committee directed that no action is warranted against the Noticee for the said observation.

17.5 **Observations pertaining to the settlement of clients' funds and securities**

- a. The Exchange verified the settlement declaration, register of securities, clients' ledgers, trial balance, and Exchange records pertaining to margin requirement. Upon verification, the Exchange observed as under:

- i. The Noticee failed to settle clients' funds and securities in 5 out of 200 instances selected for sample scrutiny (2.5% of the total instances verified) involving Rs.3.46 crores.
- ii. The Noticee delayed the settlement of clients' funds and securities by 9 to 27 days in 5 out of 200 instances selected for sample scrutiny (2.5% of the total instances verified).

- b. In reply to the observations/alleged violations, the Noticee stated that:

Non-settlement of clients' funds and securities in 5 out of 200 instances (2.5%) involving Rs.3.46 crores.

- i. The Noticee has denied the Exchange's observations on non-settlement in all the reported instances and has contended that funds were either paid to clients or retained per the prescribed criteria.

- ii. Funds were retained for four clients (UCC: 54560064, 97770014, M3MMJ2, and 56010149).
- iii. For UCC: 34720004, the client was settled through funds pay-out, and after that, pay-in was done by the client on the same day.
- iv. It has provided retention statements to support its contention and has requested that it be relieved of the said observation.

Delay in settlement of clients' funds and securities by 9 to 27 days in 5 out of 200 instances (2.5%).

- v. All the reported instances stand settled, and the delay was caused due to the Covid pandemic, which was effective during the period covered under inspection.
 - vi. Thus, the Noticee has requested that it be relieved of the observations for the same.
- c. The Committee finds as under:
- i. *Non-settlement of clients' funds and securities in 5 out of 200 instances (2.5%) involving Rs.3.46 crores.*
 - a) Noticee has claimed that settlement was done for all the clients and has provided a ledger and retention statement to substantiate its claim.
 - b) The Exchange, in an email dated June 23, 2022, requested the Noticee to provide documentary evidence such as contract notes, margin files, proof of dispatch, etc., to support its contention. The same was provided by the Noticee vide an email dated June 26, 2022.
 - c) Upon verification of the documents provided by the Noticee, its contention was found correct in 4 out of 5 instances.
 - d) In 1 instance pertaining to UCC: M3MMJ2, involving Rs.1.02 crores, the Noticee has sought the benefit of T-1 day instead of T-day margin obligation; thus, the same is not acceptable.
 - e) The violation stands reduced to 1 instance involving Rs.1.02 crores. (0.5% of the total sample instances verified)

- ii. *Delay in settlement of clients' funds and securities by 9 to 27 days in 5 out of 200 instances (2.5%).*
 - a) Noticee has attributed the delay in settlement to the COVID-19 pandemic and stated that all clients were settled, and the observation is with respect to delay only.
 - b) Upon verification, it was observed that the violation pertains to the settlement period from October 2020 to May 2021.
 - c) Since no compliance relaxations were extended for the said period, the violation persists.
 - iii. Exchange Circular No. NSE/INSP/33276 dated September 27, 2016, and Exchange Circular No. NSE/INSP/13606, dated December 3, 2019, provides that Trading Members shall settle funds and securities of all clients at least once in a calendar quarter or month, depending on the client's preference. The concept of monthly or quarterly settlement of clients' accounts was introduced to instil greater transparency and discipline in the dealings between the clients and the stockbrokers. Thus, non-settlement of accounts and/or delay in settlement, is prejudicial to the investors' interests.
 - iv. By failing to settle/delay settlement of clients' accounts, the Noticee violated the regulatory provisions of the Circulars stated above.
- d. Given the findings above, the Committee directed that the Noticee be advised to ensure non-recurrence of the observations pertaining to the settlement of clients' funds and securities as per Exchange Circular No. NSE/INSP/47457 dated February 25, 2021.

17.6 Non-closure/ winding up of client collateral account by August 31, 2020

- a. The Exchange verified the demat accounts of the Noticee. Upon verification, the Exchange observed that the Noticee had not closed/wound up 1 client collateral account by August 31, 2020.
- b. In reply to the observations/alleged violations, the Noticee stated that:
 - i. The accounts stand freezed for debit and credit, so the demat account is not yet closed.
 - ii. Five scrips are listed in the said demat accounts, but either the scrips stand under safe keep quantity or are listed in locked in quantity.

- iii. 1000 scrips of Lanco Infratech Limited, 351 scrips of SRS Limited, 41 scrips of Supreme Tex Mart Limited, and 25000 scrips of Visesh Infotecncics Limited, pertain to safe keep quantity, and 990 scrips of Yes Bank Limited pertain to locked in quantity.
 - iv. Thus, it has ensured requisite compliance for the said demat accounts.
 - v. The Noticee has provided a demat holding statement of the said collateral demat account to support its contention.
- c. The Committee finds as under:
- i. The Noticee contended that since shares under safekeeping/lock-in were held in the collateral account, it could not be close/wind them up.
 - ii. Upon verification of the client master list and demat holding statement provided by the Noticee in support of its contention vis-à-vis the weekly holding statement as on the cut-off date prescribed for account closure (i.e., August 31, 2020), it was observed that Noticee's claim was correct. The said accounts are currently frezeed for debit and credit. Thus, the Noticee could not close the said demat account for a genuine reason.
- d. Given the findings above, the Committee directed that no action is warranted against the Noticee for the said observation.

17.7 **Incorrect data reported in the weekly holding statement**

- a. The Exchange verified the weekly holding statement submitted by the Noticee as of August 31, 2021, vis-à-vis the demat account holding statement. Upon verification, the Exchange observed that the Noticee submitted incorrect data to the Exchange as under:
- i. Securities available in the demat account but not reported in the weekly holding statement in 6 scrips involving Rs.2,97,694/-.
 - ii. Securities reported in the weekly holding statement but not available in the demat account in 3 scrips involving Rs.10,50,846/-.
- b. In reply to the observations/alleged violations, the Noticee stated that:
- Securities not reported in the weekly holding statement (6 scrips involving Rs.2,97,694/-)*
- i. For 1 instance involving Rs.2.38 lakhs, Noticee has claimed that the mismatch is due to securities received for pay-in from the client.

- ii. For 4 instances involving Rs.0.56 lakhs, Noticee has claimed that these securities were held in a de-mat account frozen for debit and credit. Further, securities involving Rs.0.54 lakhs were returned to respective clients in December 2021.
- iii. For 1 instance involving Rs.0.04 lakhs, Noticee has attributed the mismatch to oversight.
- iv. Further, it requested that a lenient view be taken, and it be relieved of penal consequences if any, as the differences are observed only in 6 out of 1124 instances which is merely 0.53% of the total instances verified.

Securities not available in the de-mat account (3 scrips involving Rs.10,50,846/-)

- v. The difference is due to an error in uploading the details of 3 securities wherein the clients had internally short received the said securities from the seller clients.
- vi. Ideally, these securities would not get reported to the Exchange as the buyer had not received the securities due to an internal shortage.
- vii. Further, the difference pertains only to 3 out of 1124 instances (0.26 % of the total instances). Thus, a lenient view may be taken, and it is warned or advised.

c. The Committee finds as under:

- i. *Securities not reported in the weekly holding statement (6 scrips involving Rs.2,97,694/-)*: The Noticee has attributed the observed violations to non-reporting securities held in frozen demat account and oversight. However, the same is unacceptable as all securities must be reported in the holding statement submitted to the Exchange. Further, inadvertent mistakes on the part of the Noticee caused due to its negligence/oversight cannot be excused. The Trading Members must verify the data before submission to the Exchange. Thus, the violation persists.
- ii. *Securities not available in the demat account (3 scrips involving Rs.10,50,846/-)*
 - a) The Noticee attributed the observations to securities not received due to an internal shortage and inadvertently captured by the back-office

software in the report submitted to the Exchange. However, the same is unacceptable as all Trading Members must ensure that the data is verified before submission to the Exchange. Incorrect reporting for reasons whatsoever defeats the purpose of regulation and is thus, neither permissible nor acceptable.

b) The violation persists in the absence of justifiable reasons for the violations observed.

iii. Exchange Circular No.NSE/INSP/39855, dated January 3, 2019, provides that all Trading Members shall upload the data pertaining to the holding statement for all calendar days of the week. The circular stipulates that the data submitted by the Trading Member is true, correct, and verifiable. By submitting incorrect data toward the holding statement to the Exchange, the Noticee violated the regulatory provisions of the Circular stated above.

d. Given the findings above, the Committee directed that a monetary penalty of Rs.50,000/- be levied on the Noticee as per Exchange Circular No. NSE/INSP/48655 dated June 18, 2021.

17.8 **Incorrect data reported toward client-level cash and cash equivalents balances**

a. The Exchange verified the details submitted by Noticee towards client-level cash and cash equivalent balances vis-à-vis the trial balance as of August 31, 2021. Upon verification, the Exchange observed that the Noticee submitted incorrect data to the Exchange in 3 instances involving a difference of Rs.4,00,999/-.

b. In reply to the observations/alleged violations, the Noticee stated that:

i. The difference was observed only in 3 instances (i.e., 0.0037%), while the Noticee reports 80,123 instances to the Exchange for submissions towards cash and cash equivalent balances.

ii. Out of the reported instances, 1 instance of the client viz., Navgire Udhava Baban bearing client code 16060855, involving a difference of Rs.999/- is due to DP charges, which is a valid reason.

iii. The difference is minuscule for the remaining 2 client codes compared to the total no. of instances correctly reported to the Exchange.

- iv. Noticee has requested that a pragmatic view may be taken in the matter and that it may be relieved of the penal provisions, if any, considering the instances involved.
- c. The Committee finds as under:
- i. Noticee has attributed the mismatches to demat charges in 1 instance and has stated that the difference involved in the remaining 2 instances is minuscule in proportion to the instances where it has reported the data correctly.
 - ii. However, the same is unacceptable, as all cash and cash equivalents balances must be reported in the submission made by Trading Members to the Exchange, and the demat charges of the client are not an exception. Further, incorrect reporting, however minuscule and due to reason whatsoever, defeats the purpose of regulation and is thus, neither acceptable nor permissible. All Trading Members must verify the data before its submission to the Exchange. Thus, the observations/alleged violation persists.
 - iii. Exchange Circular No. NSE/INSP/43926, dated March 23, 2020, provides that Trading Members shall upload day-wise client-level cash and cash equivalents balances every week for all calendar days of that week except Sunday. The circular stipulates that the data submitted by the Trading Member is true, correct, and verifiable. By submitting incorrect data towards the holding statement to the Exchange, the Noticee violated the regulatory provisions of the Circular stated above.
- d. Given the findings above, the Committee directed that a monetary penalty of Rs.50,000/- be levied on the Noticee as per Exchange Circular No. NSE/INSP/48655 dated June 18, 2021.

17.9 **Mismatch in mobile numbers and email ids of clients**

- a. The Exchange verified the UCC database and the back-office data of the Noticee. Upon verification, the Exchange observed that the Noticee submitted incorrect data to the Exchange as under:
 - i. Mismatch in the mobile numbers of clients as per Noticee's back-office vis-à-vis Exchange's UCC database in 142 instances (0.214% of the total sample instances verified)
 - ii. Mismatch in the email ids of clients as per Noticee's back-office vis-à-vis Exchange's UCC database in 140 instances (0.210% of the total sample instances verified)

- b. In reply to the observations/alleged violations, the Noticee stated that:

Mismatch in the mobile numbers in 142 instances (0.214%)

- i. The reported instances pertain to clients in active/inactive/closed status. To ensure that the Exchange is aware of all its active/inactive clients, the status of all clients is updated in the Exchange UCC.
- ii. For active clients, mobile numbers have already been updated by the Noticee for most instances. Rectification measures have been taken for a few instances, and mobile numbers have also been updated in the UCC records.
- iii. Thus, adequate compliance is already ensured for all such instances w.r.t mismatch in mobile numbers.
- iv. There is no mismatch in mobile numbers for all instances where clients are active. For remaining instances, clients are either closed/inactive till such mobile numbers are not updated.
- v. It has requested that a pragmatic view be taken, and it is relieved of penal provisions, if any.

Mismatch in the email ids in 140 instances (0.210%)

- vi. The observations pertain to instances where clients are active/inactive/closed.
- vii. To ensure that the Exchange is always aware of all its active/inactive clients, the status of all such clients is updated in the Exchange UCC.
- viii. The Exchange has not considered the clients who are either active/closed.
- ix. Adequate compliance is already ensured for such instances w.r.t mismatch in email id.
- x. Further, where the clients are active, the email id has already been updated by the Noticee for most instances; therefore, there are no differences in email id for most instances.
- xi. Rectification measures have been taken for a few instances and have also updated the email ids in the UCC records.

- xii. A detailed explanation for all the instances where there is no mismatch in email id for active clients is provided by the Noticee. For the remaining clients, the Noticee claims to have ensured that clients are either closed/inactive till such emails were not updated.
 - xiii. It has requested that a pragmatic view be taken, and it is relieved of penal provisions, if any.
- c. The Committee finds as under:
- i. The Noticee contended that the Exchange has considered mismatches for clients marked as “inactive” in UCC in the case of 32 instances.
 - ii. Upon verification of the UCC records of the Noticee, its contentions were found to be correct in 32 instances.
 - iii. In the remaining instances, it contended that the mismatches had been rectified post-inspection. But post-inspection compliance does not absolve the Noticee from the non-compliance committed.
 - iv. Hence observations/alleged violation persists, and the total number of common clients with both email id and mobile number violations (post-removal of clients already marked as “Inactive”) is 17.
 - v. Exchange Circular No. Exchange Circular No. NSE/INVG/21841, dated October 4, 2012, provides that all Trading Members must review the email addresses and mobile numbers of clients uploaded on UCI-online and update the same if necessary. The circular stipulates that the Trading Members take utmost care while uploading client details to avoid mismatch. Mismatches were observed in the email ids and mobile numbers uploaded by the Noticee in the UCC database. Thus, the Noticee has violated the regulatory provisions stated above.
- d. Given the findings above, the Committee directed that a monetary penalty of Rs.17,000/- being Rs.1,000/- per client having mismatches in both email id and mobile numbers (i.e., Rs.1000 for 17 clients) be levied on the Noticee as per Exchange Circular No. NSE/INSP/47457 dated September 27, 2016.

17.10 **Funding of client transactions**

- a. The Exchange verified the client ledgers and trade data of the Noticee. Upon verification, the Exchange observed that the Noticee granted exposure to clients beyond the fifth trading day, as reckoned from the pay-in date, despite debit balance in the client ledgers in 8 out of 35 instances selected for sample scrutiny, involving Rs.1,75,39,844/-.

- b. In reply to the observations/alleged violations, the Noticee stated that:
- i. In 7 out of 8 instances, the Exchange has also considered the MTF balances while calculating the Exchange's funding provisions. It is clearly stated that the funding provision does not apply to the MTF segment, and thus, it is outside the ambit of funding.
 - ii. No funding has been made to any of its clients beyond T+2+5 days.
 - iii. The Noticee has provided the non-MTF ledgers in support of its contention with respect to the said 7 instances.
 - iv. For the remaining 1 instance of client Sandip Nandkumar Patil bearing code (17011340), the Noticee has stated that as per the Exchange, the funding was observed from August 3, 2021, to August 13, 2021, as further exposure (buy trade) was provided to the client on August 13, 2021.
 - v. The Noticee has contended that the same is factually incorrect as the buy trade was executed on August 11, 2021, which is T+5 day, and was settled on August 13, 2021. On August 13, 2021, there was a sell trade; thus, no further exposure was made to the client beyond T+2+5 days.
 - vi. It has provided non-MTF and MTF ledgers in support of its contention with respect to the said 1 instance.
- c. The Committee finds as under:
- i. For 7 instances involving Rs.1.73 crores – Upon verification of the MTF and Non-MTF ledgers and cash and cash equivalent data provided by the Noticee, its contention that the MTF balances were included while calculating the amount funded to the clients was found to be correct. Thus, the observation/alleged violation does not persist.
 - ii. For 1 instance involving Rs.2.66 lakhs – The Noticee has contended that the instance pertains to a client who sold securities before the stated buy order and was thus allowed to trade. The Exchange vide an email dated June 23, 2022, requested the Noticee to provide supporting documents such as contract notes to substantiate its contentions.
 - iii. Upon verification of the client ledgers and contract notes, the Noticee's contention was found to be correct, and thus, the violation does not persist.

- d. Given the findings above, the Committee directed that no action is warranted against the Noticee for the said observation.

17.11 Failure to report the inspection of the APs and records of operations carried out by APs and take appropriate necessary action.

- a. Pursuant to the scrutiny of records of the Noticee pertaining to inspection and supervision of its Authorized Persons, the following observations were recorded by the Exchange:
- i. The Noticee has 3604 active APs as of March 31, 2022. As per Exchange Circular No. NSE/INSP/42448 dated October 18, 2019, the Noticee is required to inspect at least 30% of its active APs every year, i.e., 1081 APs. Furthermore, as per Exchange Circular No. NSE/COMP/50030 dated October 21, 2021, the Noticee is required to report the details of the inspections conducted for the FY 2021-22 till April 30, 2022. Upon scrutiny of the inspection reporting by the Noticee for the period April 1, 2021, to March 31, 2022, the Exchange observed that the Noticee has failed to report the inspection of the APs and records of the operations carried out by the APs.
 - ii. Additionally, one of the Noticee's Authorized Persons Incofina Consultants LLP ("Incofina") engaged in activities other than those permitted, i.e., collecting money from clients/investors for the schemes launched and promising assured returns to clients/investors. It ran a scheme called "Inco Plus" wherein a minimum investment of Rs.1 lakh was solicited, and a return of 6.25% per quarter was offered. The scheme document mentioned that the funds were to be managed from the client's demat account, indicating the Noticee's involvement.
 - iii. The Exchange received 8 investor complaints against the Noticee wherein investors have alleged irregularities by the APs of the Noticee such as providing assured returns, collection of funds, etc.

- b. In reply to the said observations, the Noticee stated that:

Failure to inspect and report inspections of APs

- i. In terms of the Exchange Circular dated October 2019, the following two criteria ought to be followed by every Trading Member for inspection of their APs':
 - A. *Criteria - 1 (i) at least 30% of active APs ought to be inspected once a year, and (ii) each of the active AP ought to be inspected once every three (3) years.*

B. Criteria – 2 Only APs with more than 500 registered clients, more than 20 trading terminals, or where there are 3 complaints received against the said AP in the previous year have to be inspected annually.

- ii. Noticee has 3,604 active APs as of March 31, 2022. and consequently, it was required to inspect 1,081 APs once within one year for reporting the inspections undertaken in terms of the afore-stated Circular.
- iii. It was under the *bonafide* belief that the deadline for reporting data for the financial year ending 2022 was June 30, 2022, since the Exchange ENIT platform was showing a "due date" for reporting inspections for January 2022 – March 2022 to be June 30, 2022. Accordingly, there is no violation as the inspections of active APs is in line with the requirement set out in the said Circular
- iv. For APs which require annual inspection (FY ending March 31, 2022), it had fourteen active APs which qualify under the second criteria (i.e., Criteria 2 under Table 1). It has dutifully undertaken an inspection of those APs as well. While it was trying to report/upload the same on the Exchange portal (from May-2021), due to some technical hiccup at the Exchange's portal, the data could be uploaded by June 18, 2022. Accordingly, there is no violation of the Exchange Circular, as the inspections of active APs aligned with the requirement in the said Circular.
- v. In other words, the inspection was conducted on a timely basis throughout the year. The Noticee vide email dated August 5, 2022, provided AP/branch inspection reports along with photographs claiming that the same were taken at the AP's office, at the time of inspection.
- vi. Hence, the allegation in the Interim Order that the data was uploaded only after receipt of the captioned SCN is incorrect and belied by facts.

Failure to monitor APs and 8 investor complaints received against the Noticee's APs

- vii. Incofina was onboarded as an AP on April 12, 2022. Thus, it had no reason to inspect Incofina within a short period of three months. The said AP does not qualify for annual inspection as it only has sixteen registered clients in a short span of three months.
- viii. Regarding the Incofina scheme document - the source of the impugned "slide-deck"/scheme document, which Incofina allegedly circulated, is neither known nor furnished to the Noticee.

- ix. The AP (Incofina) was allegedly providing assured return based on an uncorroborated slide deck (presentation), the source of which is unknown. While the Interim Order mentions that the document was downloaded from a website (www.apnainvestor.com), there is no reason that the same can be latched on to the Noticee.
- x. The Noticee declared and asserted that the said domain name/address does not belong to it or any of its APs.
- xi. The Noticee gave an instance-wise reply to the 8 investor complaints reported against the Noticee in SCN-2.
- xii. In the complaint filed by Prasad Shimpi relating to Noticee's AP Assem Chavan and Bincy Babu, the matter was settled between the Noticee and the complainant mutually for Rs.2 lakhs.
- iv. In the complaint filed by Vivek Dixit relating to Noticee's AP Neelaksh Gupta, the matter was settled between the parties for Rs.35,000.
- v. In the complaint filed by Minimon Yadav relating to Noticee's AP Planify Consultancy India Private Limited, the Noticee terminated the AP after following the due process of law.
- vi. In the matter of Nidhi Srivastava, Malti Ghosh, and Utkarsha Deshmukh, GRC had not found any grounds for any claim made by the complainants and had closed the cases.
- vii. Further, 1 police complaint was filed against its AP, Ms. Reshma Honakamble; the police investigation is under process, and as per the direction of the police, the AP and trading accounts are freezed All the clients mapped under the said AP were called to check if they were promised any fixed return or had any issue with their trading account. However, the clients denied the same.
- viii. The Noticee vide email dated August 5, 2022, submitted an affidavit dated August 4, 2022, by its APs confirming that it is not involved in any fraudulent, misleading, malicious, unlawful practices etc., along with the code of conduct for its APs, customer relation policies, dos and don'ts for its investors to support its contention. Further, submitted a copy of newspaper publication in Economic Times dated August 4, 2022, declaring that it does not offer assured/guaranteed returns to its clients.

c. The Committee finds that:

Failure to inspect and report inspections of APs

- i. The Noticee's contention that the "due date" shown on the Exchange's ENIT platform was June 30, 2022, is not acceptable as the "due date" in ENIT Platform was only to enable the Trading Members to file the inspection details with delay. Further, the Exchange did not issue any circular to the market regarding the extension of time for filing the AP inspection reports.
- ii. The Noticee's contention that the deadline for reporting all inspection details for the financial year ending 2022 is June 30, 2022, is incorrect. The Noticee uploaded 1057 inspection reports as of June 18, 2022. Out of the said 1057 inspections, 474 inspections pertain to Q1 and Q2, which were to be filed by November 30, 2021, 170 pertain to Q3, which was to be filed by January 31, 2022, and the remaining 413 pertain to Quarter 4 which were to be filed by April 30, 2022.
- iii. The Noticee's contention that it could not upload the inspection details due to a technical error in the Exchange portal is incorrect. Upon verification of the error file, it was observed that the Noticee had used non-permissible values, i.e., "NA" instead of "Yes" or "No" value in the field. The same is evident from the "Remarks" column on the portal.
- iv. Exchange Circular No. NSE/COMP/50030, dated October 21, 2021, requires all the Trading members to upload quarterly inspection reports for quarters 1 and 2 of the financial year, latest by November 30, and for quarters 3 and 4 of the financial year by January 31 and April 30, respectively. Thus, by failing to upload the inspection details within the prescribed timeline, the Noticee has violated the regulatory provisions stated above.
- v. It is observed that all the reports have been filed post issuance of the SCN-2 dated June 14, 2022, which appears to be an afterthought. Upon verification of 3 sample cases, it was observed that the Noticee recorded no adverse observation in its AP inspection report despite complaints received from the investors against the Noticee's APs as under:

Sr. No.	AP's Name	Date of inspection as reported by the Noticee	Name of investor	Date of receipt of compliant from the investor
1.	Shivani Arvind Tandale/Shivani Vargade	March 17, 2022	Ms. Nidhi Srivastava	May 18, 2021
2.	Planify Consultancy India Private Limited	June 18, 2021	Mr. Minimon Yadav	June 15, 2021
3.	Ms. Ritu Chatterjee	September 15, 2021	Ms. Malati Ghosh	July 9, 2021

- vi. Exchange Circular No. NSE/INSP/42448, dated October 18, 2019, explicitly specifies the scope of AP inspections. It provides that the Trading Members must audit the books of accounts and records of its APs to ensure that it is not involved in any fund-based activities /collecting deposits from investors/dabba trading/chit funds or any other such schemes, that it is not involved in accepting deposits from the public and giving assured returns and it does not solicit business by issuing advertisements in newspapers/pamphlets/ journals/magazines etc. without appropriate approvals. By failing to inspect APs and by failing to upload correct details of the inspection in the Exchange database, the Noticee has violated the regulatory provisions stated above.

Failure to monitor APs and 8 investor complaints received against the Noticee's APs

- vii. The Noticee's contention that Incofina was registered on April 12, 2022, and there is no reason to inspect within a short period of three months is not acceptable, as Exchange Circular No. NSE/INSP/42448, dated October 18, 2019, casts an obligation on the Trading Member to carry out an immediate inspection, irrespective of the last inspection, in case of inputs/alerts about any suspicious transactions/dealing/assured returns, etc. by an AP. It is observed that despite knowing of the assured returns schemes run by its AP, no action was immediately initiated by the Noticee as per SEBI Circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009.
- viii. The Noticee's contention that it acted proactively is incorrect as the AP registration of Incofina was deactivated from July 15, 2022, which is post issuance of the Interim Order dated July 12, 2022.
- ix. The Noticee's contention that it was unaware of the source of the Incofina scheme document is incorrect as the said document contained the source

link, i.e., www.apnainvestor.com, was annexed as Annexure A to the SCN-2 dated June 14, 2022.

- x. Further, the scheme document offered a guaranteed return of 6.25% every quarter on a minimum investment of Rs.1 lakh via the "Inco Plus" scheme. The scheme document mentions that the investment duration will be one year, and the funds will be managed from the client's demat account. It was observed that Incofina's office address, as mentioned in the scheme documents, matches with records of the Exchange.
- xi. Noticee's contention that all the investor complaints have been settled or dismissed does not dissolve the said violations as settlement of complaints does not prohibit the Exchange from initiating action against the Trading Members for the violations pertain to the regulatory provisions. The contents of the complaints against the Noticee/its APs are severe and pertain to assured returns. Details of the same are as under:

Sr. No.	Name of Complainant	Contents of the Complaint filed
1.	Prasad Shimpi	The AP ran a scheme committing payment of 1.2% monthly return on a 5 lakhs capital investment, paid every quarter. The AP will retain any return above 1.2%, and a flat brokerage of Rs.5500/- will be charged from clients. The AP committed to capital protection and regular pay-outs.
2.	Vivek Dixit	The complainant alleged that his mobile number and email id were changed without request and that AP of the Trading Member had accessed his account without authorization for unauthorized trading from the account.
3.	Minimon Yadav	The AP offered assured returns. The complaint submitted screenshots from its youtube and Facebook channel showing evidence of fixed return schemes.
4.	Nidhi Srivastava,	The complainants <i>inter alia</i> alleged misuse of login credentials shared with the AP, unauthorized trading using the same, etc.
5.	Malti Ghosh	
6.	Utkarsha Deshmukh	
7.	Police Compliant	The husband of the AP of the Noticee cheated hundreds of people by offering a 5% return on deposits and collecting crores of rupees. In turn, the said money was exposed to risk by investing in the share market. The police in this

		matter directed that the account of AP shall also be frozen.
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- xii. Further, affidavits signed by the APs and newspaper publication made by the Noticee dated August 4, 2022, does not absolve the Noticee / its APs of its liability for running assured return schemes as enumerated in detail above.

18. Given the detailed findings evidenced by examination and consideration of multiple documents, the Committee noted as under:

- a. The Committee noted that the Exchange had observed violations pertaining to assured return offered by the Noticee not just from the inspection conducted by the Exchange but from several sources. Firstly, evidence of assured fixed returns was observed in the client ledger of the Noticee. Secondly, investor complaints pertaining to assured returns offered by the Noticee and unauthorized trades executed by the Noticee/its APs. Thirdly, the website of the Noticee's AP, namely Incofina contained a scheme document making an outright offer of an assured return to investors of the scheme. The scheme document explicitly mentioned the name and address of the AP, which matches with the records of the Exchange.
- b. The Committee noted that all the clients, even though referred through its APs, are registered as clients with the Noticee. Thus, the Noticee holds accountability towards all the clients registered with the APs and is fully liable for the acts of its APs. By failing to monitor its APs, the Noticee has failed to discharge the said duty towards the clients and has grossly failed in the conduct of its business. The actions of Noticee and its APs have raised an immense risk to the existing investors. The same reflects that the activities of Noticee are not within the ambit of the regulatory provisions.
- c. The observed violations, therefore, establish beyond any reasonable doubt the failure in Noticee's internal control and governance mechanism, which is detrimental to the interests of the innocent investors registered with the Noticee. The Committee noted that in the recent past, there had been a few Trading Members' defaults wherein assured return scheme were offered by Trading Members acting in concert with its registered APs resulting in the loss of life hard earned savings of thousands of investors.
- d. All Trading Members must conduct the AP inspection duly in all quarters and submit the reports to the Exchange as per the timelines prescribed in the Exchange circulars. Further, the Trading Members must ensure adequate due diligence while onboarding its APs. Trading Members must deal with clients' complaints with utmost sincerely and take proactive measures to protect the investors' interests. By simply

settling clients' complaints, Trading Members cannot avoid its responsibility towards its clients.

- e. Pursuant to the Interim Order dated July 12, 2022, under the direction of the Committee, a forensic audit was conducted, and the external auditor submitted an interim report focusing on the observations pertaining to assured returns on August 4, 2022. The said report contained certain evidence concerning periodic assured returns and involvement of a few APs in soliciting investments from clients on assured/guaranteed return schemes etc. The Committee noted that the observations recorded in the forensic audit might have serious implications on the safety of client assets lying with the Noticee. The Committee observed that the same shall be dealt with expeditiously and directed the Exchange to issue a fresh SCN. However, for the records, while deciding on the present SCN 1 and SCN 2, the observations of the interim forensic report have not been considered by the Committee.

DECISIONS

19. The Committee directed, as under:

- i. The Noticee to stop onboarding new clients and APs for two months from the date of this order.
- ii. The Noticee to issue daily SMSs and emails to all its registered clients stating that it does not offer any assured return scheme for the next two months from the date of this order.
- iii. The Noticee to conduct a detailed examination of all its APs, including the activities of directors of its APs, and take immediate actions against them, if required. The Noticee shall report the same to the Exchange.
- iv. The Noticee shall undertake an examination of all the clients' ledgers and report to the Exchange funds pay-outs made to respective clients in excess of the trade settlement due to them within seven days from the date of issuance of the said order.
- v. The Noticee to refund funds to all the investors who were offered assured return and submit a CA certificate confirming the same within 30 days from the date of this order.

20. The Committee further directed that disciplinary action be taken against the Noticee, as under:

Sr. No.	Committee's Findings	Prescribed penalty as per Exchange Circular No. NSE/INSP/47457 dated February 25, 2021, NSE/INSP/42919 dated December 16, 2019, NSE/INSP/48655 dated June 18, 2021	Penalty Levied
1.	Noticee provided margin trading facility in unapproved securities in 1 instance.	Rs.50,000 per scrip	Warning to ensure non-recurrence
2.	Noticee has failed to settle clients' funds and securities in 1 instance involving Rs.1.02 crores. (0.5%) and has delayed the settlement of clients by 9 to 27 days in 5 out of 200 instances (2.5%).	Non-settlement of clients' funds and securities Up to 2% of the number of instances- Advise Delay in settlement up to 50% of the instances verified – Warning / Advise	Advise to ensure non-recurrence
3.	Noticee submitted incorrect data towards weekly holding statement a. Securities available in the de-mat account but not reported in the weekly holding statement (6 scrips involving Rs.2,97,694/-). b. Securities reported in the weekly holding statement but not available in the de-mat account (3 scrips involving Rs.10,50,846/-)	Penalty of Rs. 1 lakh in case of procedurally incorrect submission and disablement of trading terminals for 1 day in case of material incorrect submission	Monetary penalty of Rs.50,000/-
4.	Noticee submitted incorrect data towards client-level cash and cash equivalents balances as of August 31, 2021, in 3 instances involving a difference of Rs.4,00,999/-.	Penalty of Rs. 1 lakh in case of procedurally incorrect submission and disablement of trading terminals for 1 day in case of material incorrect submission	Monetary penalty of Rs.50,000/-
5.	Mismatches were observed in the mobile numbers and email ids of Noticee's clients. Clients with both email id and mobile number violations (post-removal of	Rs.1,000/- per client	Monetary penalty of Rs.17,000/- (being Rs.1,000/- for 17 clients)

	clients already marked as "Inactive"): 17 clients		
		TOTAL	Monetary Penalty of Rs.1,17,000/-

21. The Noticee shall pay a monetary penalty of Rs.1,17,000/- (Rupees One Lakh Seventeen Thousand only).
22. The Noticee is directed to note the non-monetary penalties mentioned above and ensure non-recurrence of the observed violations.

Sd/-
Mona Bhide
(Chairperson)

Sd/-
K Narsimha Murthy
(Committee Member)

Sd/-
Anuradha Rao
(Committee Member)

Sd/-
Ranganayakulu Jagarlamundi
(Committee Member)

Date: August 11, 2022