

**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 May 23, 2023**

In the matter of the Trading Member M/s. SPFL Securities Limited

CORAM:

Ms Mona Bhide	- Chairperson
Mr K Narasimha Murthy	- Committee Member
Mr Ranganayakulu Jagarlamudi	- Committee Member
Mr S Ravindran	- Committee Member
Mr Ashishkumar Chauhan	- Committee Member

ALSO PRESENT:

Dr Dinesh Kumar Soni	- Senior Vice President – Regulatory
Ms Renu Bhandari	- Vice President – Inspection
Mr Shailesh Adukia	- Vice President – Enforcement
Mr Janardhan Gujran	- Vice President – Enforcement

BACKGROUND

1. **M/s SPFL Securities Limited ("Noticee")** is a Trading Member registered with the National Stock Exchange of India Limited ("**Exchange**"/"**NSEIL**") and enabled for trading in the Capital Market ("**CM**") segment since December 1995, Futures & Options ("**F&O**") segment since July 2002 and Currency Derivatives ("**CD**") segment since December 2008.
2. Securities and Exchange Board of India ("**SEBI**") conducted a comprehensive joint inspection of the Noticee's books of accounts and records with the Exchanges, covering the period April 1, 2021, to November 30, 2022, in January 2023.
3. Further, the Exchange conducted a limited purpose inspection of the Noticee's books of accounts and reports in January 2023 to verify the availability of funds as of November 25, 2022, January 13, 2023, and January 30, 2023. Post-inspection, the Exchange issued a show-cause notice ("**SCN**") dated February 7, 2023, for the observed non-compliances with the regulatory provisions. The Noticee, vide its letter dated February 17, 2023, replied to the SCN.

INSPECTION OBSERVATIONS/VIOLATIONS

4. The observations/violations alleged in the SCN are summarized hereunder:
- 4.1 Providing/offering fixed/assured periodic returns to the clients directly and/or through its Authorised Person (AP) in 1100 instances, pertaining to 89 clients involving Rs.6.07 crores.
- 4.2 Misuse of clients' funds to the extent of Rs.1.40 crores, Rs.2.69 crores, and Rs.1.98 crores as of November 25, 2022, January 13, 2023, and January 30, 2023, respectively, thereby violating Principle 1 of the Enhanced Supervision of Stockbrokers.

REGULATORY PROVISIONS

5. At the outset, it is appropriate to refer to the relevant regulatory provisions alleged to have been violated by the Noticee; extracts whereof are reproduced below:

5.1. **Providing/offering fixed/assured periodic returns to the clients directly and/or through Authorise Person (AP)**

- 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.

- b. Exchange Circular No. NSE/COMP/48536 dated June 09, 2021

Member's attention is drawn to SEBI circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009, Market Access through Authorised Persons, wherein the framework governing the market access through Authorised persons (AP) was introduced.

An Authorised Person is a person/entity who, as an agent of a Member, provides access to the clients of the Member to trading platform of a stock exchange. While doing so, the Authorised Person is prohibited from:

1. ...
2. *Employing any device, scheme or artifice or engage in any act or practice, including operating assured schemes, unauthorised portfolio*

management & investment schemes etc., in contravention of the provisions of various SEBI/Exchange Rules & Regulation and circulars issued from time to time.

Members are required to exercise adequate control and due diligence over the activities & transactions of their Authorised persons.

Members should ensure that their Authorised Persons are engaging only in permitted activities and are not undertaking any business which are disallowed under the Byelaws, Rules & Regulations and circulars of SEBI/Exchanges including operating any schemes of unauthorised collective investments/portfolio management, promising indicative/guaranteed/fixed returns etc. It is, hereby, reiterated that all the acts of omission and commission of the Authorized person and/or their Directors/Partners, employees etc., shall be deemed to be those of the Member and the Member shall be responsible for all such acts of its Authorised person(s) and/or their Directors/Partners, employees etc., including liabilities arising there from.

c. Exchange Circular No. NSE/INSP/51770 dated March 25, 2022

Members' attention is drawn to Exchange circular NSE/INSP/49434 dated August 27, 2021, wherein it was reiterated that members are not permitted to undertake any business/activity that is not allowed under the Byelaws, Rules & Regulations and circulars of SEBI/Exchanges.

However, despite various guidelines/ clarifications issued by the Exchange from time to time, certain practices followed by members are not in compliance with the relevant guidelines issued by the Exchange.

Below are some of the market practices, that have come to the notice of the Exchange and members are advised to refrain from engaging in such practices.

e. Assured Return Schemes / Unauthorised Portfolio Management Service: It has also come to the notice of the Exchange that certain members were engaging in activities/schemes of fixed / periodic payments, which are not permitted under the Byelaws, Rules & Regulations, and circulars of SEBI/Exchanges. It is reiterated that members are not permitted to undertake any business/activity that is not allowed under the Byelaws, Rules & Regulations and circulars of SEBI/Exchanges including operating any schemes of unauthorised collective investments/portfolio management, promising indicative/ guaranteed/fixed returns/payments etc.

5.2. Misuse of clients' funds**a. Regulation 4.5.3 (e) of NSEIL Regulations (CM and F&O Segments)**

No Trading Member or person associated with a Trading Member shall make improper use of the constituent's securities or funds.

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

3.3 *Based on the aforesaid information submitted by the stockbroker, Stock Exchanges shall put in place a mechanism for monitoring of clients' funds lying with the stockbrokers on the principles enumerated below:*

3.3.1. *Funds of credit balance clients used for settlement obligation of debit clients or for own purpose:*

Principle

The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C)

$$G=(A+B)-C$$

PRESENT PROCEEDINGS BEFORE MCSGFC

The Exchange, vide its email dated May 18, 2023, granted the Noticee with an opportunity for a personal hearing before the Committee. Mr. Amit Agrawal - Compliance Officer, on behalf of the Noticee, appeared for the personal hearing and re-iterated its written submissions before the Committee.

CONSIDERATION & FINDINGS

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

6.1. Providing/offering fixed/assured periodic returns to the clients directly and/or through Authorised Person (AP)

6.1.1. Upon verification of client ledgers of the Noticee, the Exchange observed certain trends/patterns of a periodic fixed amount of funds pay-outs made in 1100 instances, pertaining to 89 clients involving Rs.6.07 crores. Out of the 89 clients, 16 are direct clients of the Noticee, and 73 clients are mapped to 17 APs.

6.1.2. In reply to the SCN, the Noticee submitted as under:

- a. The Noticee denied the allegation of providing/offering fixed/assured periodic returns to the clients directly/or through APs. There are no direct 16 clients as mentioned in the SCN. In the annexures to the SCN, only 12 client codes are showing as direct clients. These clients are introduced through some or the other APs. It provided the details of 16 clients along with details of mapping to the respective AP.
- b. The clients traded as per their will and the Noticee made payments as requested by the clients on a monthly basis.
- c. In relation to observations that certain trends/patterns of a periodic fixed amount of funds/pay-out made in certain instances, the Noticee provided letters from each and every client stating that the clients were not offered certain trends/patterns of a periodic fixed amount of funds pay-out.
- d. The Noticee or its AP did not offer any fixed/assured periodic return. Regarding the observations that there are similar patterns of trading, it is submitted that the trades carried out by the Noticee were as per the instructions of the clients.
- e. It maintained high standards of integrity, promptitude and fairness and exercised due skill, care, and diligence in the conduct of its business. It never indulged in manipulative, fraudulent, or deceptive transactions or schemes or spread rumours with a view to distorting the market equilibrium or making personal gains.

6.1.3. The Committee finds as under:

- a. The Noticee contended that the clients traded as per their will and payments were made on a monthly basis as requested by the clients. However, the Noticee failed to submit the evidence of such requests

received from the clients, which could be inter alia in the form of writing, telephone recording, email from registered mail id, the record of messages through registered mobile phones, and log for internet requests. Thus, in the absence of any supporting documents the contention of the Noticee is not tenable.

- b. With respect to the observation pertaining to certain trends/patterns of a periodic fixed amount of funds pay-out made, the Noticee submitted letters from the client inter alia confirming that *"I have not received any scheme offering fixed/committed/regular return/capital guaranteed from AP...not been suggested any trading/investment calls...executed trades by ourselves without any dispute and received daily contract notes, bills, ledgers and all related documents...receiving/paying regular payments as per our request/obligation"*. Upon perusal of the letters, it is observed that most of the letters are undated, and few letters are dated between February 10, 2023, and February 20, 2023, i.e., post SCN. If the observed periodic fixed funds pay-outs were made on the basis of the specific request from the client, the Noticee is required to provide evidence of such request received from the clients at the time of making such funds pay-out and not thereafter. Thus, the Noticee has failed to provide any evidence to show that the funds' pay-outs were made on the basis of the prior specific request from the clients.
- c. With respect to the similar trading pattern observed with regard to multiple clients of the same AP as well as across APs/direct clients, the Noticee contended that the trades were carried out as per the instructions of the clients and in support of its contention the Noticee submitted clients' letters inter alia confirming that *"done all my trades through AP office, without any dispute"*. Upon perusal of the letters, it is observed that most of the letters are undated, and few letters from January 2023, i.e., post execution of trades, which is not acceptable.
- d. The Exchange verified funds' pay-outs of Ms Akanksha Jain on a sample basis out of 89 clients. The Committee notes that post-analysis of the financial ledger of Ms Akanksha Jain, it is observed that the actual end-of-day payable balances are in the range of Rs.15.39 lakhs to Rs.16.29 lakhs, against the fixed funds' pay-out of Rs.0.15 lakhs.

The extract of the financial ledger summary of Ms. Akanksha Jain is as under:

UCC	Client Name	Date	Debit (Rs.)	Balance (Rs.)
CA2126	AKANKSHA JAIN	28-Oct-21	15,000	1,542,585
CA2126	AKANKSHA JAIN	2-Dec-21	15,000	1,539,281
CA2126	AKANKSHA JAIN	3-Jan-22	15,000	1,558,233
CA2126	AKANKSHA JAIN	1-Feb-22	15,000	1,601,003
CA2126	AKANKSHA JAIN	2-Mar-22	15,000	1,629,208
CA2126	AKANKSHA JAIN	30-Mar-22	15,000	1,613,615
CA2126	AKANKSHA JAIN	2-May-22	15,000	1,547,758
CA2126	AKANKSHA JAIN	1-Jun-22	15,000	1,542,328
CA2126	AKANKSHA JAIN	1-Jul-22	15,000	1,540,017
CA2126	AKANKSHA JAIN	30-Jul-22	15,000	1,564,611
CA2126	AKANKSHA JAIN	2-Sep-22	15,000	1,584,020
CA2126	AKANKSHA JAIN	1-Oct-22	15,000	1,584,182
CA2126	AKANKSHA JAIN	31-Oct-22	15,000	1,576,175

Thus, it is evident from the financial ledger summary of Ms. Akanksha Jain, that a fixed funds pay-out of Rs.15,000/- was made. The Noticee neither provided any reason for a fixed pay-out of funds to the said client nor provided the documents/communication received from the client requesting for a funds' pay-outs of Rs.0.15 lakh for the observed instances.

- e. The Committee notes that, on comparison of payments made to clients, profit/ loss, and net sell values, it was observed that the periodic payments do not commensurate with the trades executed in the accounts.
- f. SEBI has put in place a framework for Market Access through APs pursuant to the recommendations made by the Secondary Market Advisory Committee of SEBI. The said framework is notified by SEBI vide its circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009. The said framework casts a regulatory obligation on the Trading Members, and the Trading Member shall be responsible for all acts of omission and commission of its Authorized Person(s) and/or employees, including liabilities arising therefrom. The same is reproduced hereinbelow:

7. Obligations of Stock Broker

- a) *The stock broker shall be responsible for all acts of omission and commission of his authorised person(s) and/or their employees, including liabilities arising there from.*

- g) On noticing irregularities, if any, in the operations of authorised person, stock broker shall seek withdrawal of approval, withhold all moneys due to authorised person till resolution of investor problems, alert investors in the location where authorised person operates, file a complaint with the police, and take all measures required to protect the interest of investors and market.*
- g. As per Exchange Circular No. NSE/INSP/51770 dated March 25, 2022, Trading Members are not permitted to undertake any business/activity that is not allowed under the Byelaws, Rules & Regulations and circulars of SEBI/Exchanges including operating any schemes of unauthorised collective investments/portfolio management, promising indicative/ guaranteed/ fixed returns/payments etc. The Noticee violated the regulatory provisions mentioned above.
- h. Further, as per Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957, no person who is a Trading Member at the time of application for recognition or subsequently admitted as a Trading Member shall continue as such if it engages either as a 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.
- i. The Committee notes 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 exercise adequate control over the activities of 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.
- j. The observed violation conclusively demonstrates the Noticee's failure in internal control and governance mechanisms. The Committee notes that the conduct of the Noticee by allowing a misleading practice of offering assured/ fixed returns to innocent clients undermines the integrity of the financial market and jeopardizes the interest of the investors. The Committee notes that in the recent past, a few Trading Members had defaulted wherein assured return schemes were offered by Trading Members' colluding with its registered APs resulting in the loss of hard-earned savings for thousands of investors.

- k. The Committee opines that steps need to be taken to protect the interest of the clients/investors and the securities market. The Committee also considers sending a clear message that such violations will not be tolerated by serving as a reminder to the Trading Members of the imperative to adhere to the regulatory provisions and maintain transparency and fairness in their operations.

6.1.4. Given the findings mentioned above, the Committee directed the Noticee as under:

- a. The Noticee to stop onboarding new clients and APs for three months from the date of this order.
- b. The Noticee shall conduct a concurrent audit and submit a fortnightly certificate to certify that the clients of the Noticee are not being offered assured/fixed returns for the next six months from the date of the order.
- c. The Noticee to submit a declaration from all its active clients as of the date of the order undertaking that the Noticee is not providing any assured / fixed return scheme to the clients directly and/or through its AP within six months from the date of the order.
- d. The Noticee to issue weekly SMSs and emails to all its registered clients for the next six months from the date of the order stating that it does not offer any assured/fixed return scheme.
- e. 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 within six months from the date of the order.

6.2. **Misuse of clients' funds**

6.2.1. Upon verification of the collaterals/deposits available with the Clearing Corporation/Clearing Member in the form of cash and cash equivalents, fund balances available in the client and settlement bank account of the Noticee, and client payable reported in the client-level cash and cash equivalent submission by the Noticee as of November 25, 2022, January 13, 2023, and January 30, 2023, the Exchange observed that the Noticee used the funds of credit balance clients to meet the settlement obligations of the debit balance clients and/or own purpose to the extent of Rs.1.40 crores, Rs.2.69 crores, and Rs.1.98 crore as of November 25,

2022, January 13, 2023, and January 30, 2023, respectively, thereby violating Principle 1 of the Enhanced Supervision of Stockbrokers.

6.2.2. In reply to the SCN, the Noticee submitted as under:

- a. The Noticee denied the allegation of misusing any client funds. The Noticee did not have proprietary trading, and no clients' funds were used for the proprietary purpose. It did not use the funds of credit balance clients for debit balance clients.
- b. The Noticee took working capital from the trading clients for which different ledgers were maintained and interest was being paid to the clients, however, the funds were taken in the client account which should have been taken in its own account. The Noticee was unaware that it cannot accept deposits from trading clients.
- c. It rectified the same and deposits relating to clients have been returned and in future also no deposits would be taken from the trading clients. The Noticee have been making payments to all clients whenever due and there are no complaints during the inspection period except for 2 complaints for which the GRC order is in its favour.

6.2.3. The Committee finds as under:

- a. The Noticee stated that it took working capital from the trading clients for which it maintained the different ledgers and also paid the interest. The Noticee further stated that the funds were taken into the client's account instead of its own account and it was unaware that it cannot accept deposits from trading clients. The Noticee rectified the same and returned the amount to the clients which is not acceptable as post-inspection compliance does not absolve the Trading Member of its liability for the violations committed prior to it.
- b. As per Regulation 4.5.3 (e) of the NSEIL Regulations (CM and F&O Segments), no Trading Member or person associated with a Trading Member shall make improper use of the constituent's securities or funds. As per clause 3.3.1 of Exchange Circular No. NSE/INSP/33276 dated September 27, 2016, the total available funds i.e., cash and cash equivalents with the stock broker and with the Clearing Corporation/Clearing Member should always be equal to or greater than clients' funds as per ledger balance. Thus, the Noticee violated the above regulatory provisions by misusing the clients' funds.

- c. Considering that the misuse of clients' funds was observed on multiple days and extends beyond a period of 30 days, the Committee decided to levy the monetary penalty on the highest misuse of clients' funds observed in the block of 30 days as under:
- i. From November 25, 2022, to December 24, 2022, i.e., Rs. 1.40 crores as of November 25, 2022
 - ii. From January 13, 2023, to February 12, 2023, i.e., Rs.2.69 crores as of January 13, 2023
- d. The net worth of the Noticee was Rs.14.46 crores as on September 30, 2022.
- e. The highest misuse of clients' funds in the block of 30 days was observed for Rs.1.40 crores and Rs.2.69 crores as on November 25, 2022, and January 13, 2023, respectively. As per Exchange Circular No. NSE/INSP/53530 dated September 2, 2022, the penalty is prescribed as under:

Misuse above Rs. 50 Lakhs and up to Rs.2 crores	If misuse is up to 50% of net worth - Monetary penalty of 2% of misuse or Rs. 2 lakh whichever is higher
Misuse above Rs.2 crores and less than Rs. 10 Crore	If misuse is up to 50% of net worth - Monetary penalty of 3% of misuse

- 6.2.4. Given the findings mentioned above, the Committee decided to levy a monetary penalty of Rs.10,88,300/- (2% of Rs.1,40,03,396 i.e., Rs.2,80,067/- rounded off to Rs.2,80,100 + 3% of Rs.2,69,40,989 i.e. Rs.8,08,229/- rounded off to Rs.8,08,200) for the observed violation in terms of Exchange Circular No. NSE/INSP/53530 dated September 2, 2022.

DECISION

7. 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/53530 dated September 2, 2022	Penalty Levied
a.	The Noticee provided/offered fixed/assured periodic returns to the clients directly and/or through Authorised Person (AP)	No prescribed penalty	Direction as per point no.8
b.	The Noticee misused the clients' funds to the extent of Rs.1.40 crores, Rs.2.69 crores, and Rs.1.98 crore as of November 25, 2022, January 13, 2023, and January 30, 2023, respectively (Principle 1 of Enhanced Supervision)	<u>25.11.22 to 24.12.22</u> Misuse above Rs.50 lakhs and up to Rs.2 crores and up to 50% of net worth – monetary penalty of 2% of the misuse or Rs.2 lakhs whichever is higher	Rs.10,88,300/- (2% of Rs. 1.40 crores i.e. Rs. 2,80,100/- + 3% of Rs. 2.69 crores i.e. Rs.8,08,200/-)
	<u>Highest misuse in a continuous period of 30 days</u> 25.11.22 to 24.12.22, i.e., Rs.1.40 crores as of 24.12.22 13.01.23 to 12.02.23, i.e., Rs.2.69 crores as of 13.01.23	<u>13.01.23 to 12.02.23</u> Misuse above Rs.2 crores and less than Rs. 10 crores and up to 50% of net worth - monetary penalty of 3% of the misuse	
Total			Rs.10,88,300/-

8. The Committee directed the Noticee as under:

- a. To pay a monetary penalty of Rs.10,88,300/- (Rupees Ten Lakhs Eighty-Eight Thousand and Three Hundred only)

- b. To stop onboarding new clients and APs for three months from the date of this order.
- c. To conduct a concurrent audit and submit a fortnightly certificate to certify that the clients of the Noticee are not being offered assured/fixed returns for the next six months from the date of the order.
- d. To submit a declaration from all its active clients as of the date of the order undertaking that the Noticee is not providing any assured / fixed return scheme to the clients directly and/or through its AP within six months from the date of the order.
- e. To issue weekly SMSs and emails to all its registered clients stating that it does not offer any assured/fixed return scheme for the next six months from the date of the order.
- f. 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 within six months from the date of the order.

Sd/-
Mona Bhide
(Chairperson)

Sd/-
K Narasimha Murthy
(Committee Member)

Sd/-
S Ravindran
(Committee Member)

Sd/-
Ranganayakulu Jagarlamudi
(Committee Member)

Sd/-
Ashishkumar Chauhan
(Committee Member)

Date: June 23, 2023