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 – 400051
held on April 11, 2022

In the matter of Trading Member M/s. Concunsmart Shares and Stock Pvt. Ltd.

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

PRESENT:
Mr Suresh Nair - Vice President - Enforcement
Ms Renu Bhandari - Vice President - Inspection
Ms Neetu Juneja - Vice President - Western Region

BACKGROUND

1. M/s. Concunsmart Shares and Stock Broker Pvt. Ltd. ("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 2018, Futures & Options ("F&O") and Commodity ("COM") segments since August 2019.

2. The Exchange conducted a regular inspection of the Noticee’s books of accounts and records covering the period from October 1, 2020, to September 30, 2021, across segments, from November 25, 2021, to February 11, 2022. Post-inspection, the Exchange issued a show-cause notice dated February 14, 2022.
INSPECTION OBSERVATIONS/ALLEGED VIOLATIONS

3. The inspection observations/alleged violations mentioned in the SCN are summarized hereunder:

3.1. Monthly/Regular pay-outs to clients

   a. The Noticee made monthly/regular pay-outs to 25 clients amounting to Rs. 83.57 lakhs.

   b. In the case of 5 out of the said 25 clients, the monthly/regular pay-outs have increased to the extent of Rs. 51.44 lakhs on receipt of additional funds.

   c. In the case of 2 out of the said 25 clients, monthly/regular pay-outs have resulted in a debit balance in the clients' accounts.

   Given the above, it is prima facie observed that the Noticee has been providing assured returns to the clients.

3.2. Observations related to non-settlement of clients' funds and securities

   a. The Noticee did not settle the clients’ funds and securities in 6 instances of 4 active clients involving Rs. 5.16 lakhs and 11 inactive clients involving Rs. 2.09 lakhs.

   b. The Noticee delayed the settlement of funds and securities of 4 clients.
c. The Noticee delayed issuing the statement of accounts and retention statement to 2 clients.

3.3. Incorrect reporting of margin collected from clients

a. The Noticee incorrectly reported the end of day (“EOD”) margin collected from 2 clients in the F&O segment involving Rs.52,753/-.

b. The Noticee incorrectly reported the peak margin collected from 3 clients in the F&O segment involving Rs.14,465/-.

3.4. Incorrect data submitted for weekly monitoring of clients’ funds

The Noticee submitted incorrect data towards weekly monitoring of clients’ funds under the Enhanced Supervision of Stockbrokers as of September 24, 2021, in the range of (-ve) Rs.14.09 lakhs to Rs.3.63 lakhs in 6 areas, viz. value of collateral deposited with the Clearing Corporation in the form of cash and cash equivalents, total credit balance, total debit balance, own securities deposited as collateral with Clearing Corporation/Clearing Member, margin utilized for positions of credit balance clients, and free/unblocked collateral deposited with Clearing Corporation/Clearing Member.

REGULATORY PROVISIONS

4. 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:

4.1. “Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957

8. The rules relating to admission of members of a stock exchange seeking recognition shall inter-alia provide that:
(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 a principal or employee in any business other than securities or commodity derivatives except as a broker or agent not involving any personal financial liability.”

4.2. Clause A (5), Schedule II, SEBI (Stockbroker) Regulation, 1992

A. General

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

4.3. Regulation 4.5.1 of NSEIL Regulations (CM and F&O Segments)

4.5.1 ADHERENCE TO SEBI CODE OF CONDUCT

The Trading Member shall at all times subscribe to the Code of Conduct as prescribed by the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992.

4.4. Rule 3(d) of Chapter IV of NSEIL Rules

Misconduct

(3) A trading member shall be deemed guilty of misconduct for any of the following or similar acts or omissions namely:

(a) ....

(b) Violation: If it has violated provisions of any statute governing the activities, business, and operations of the Exchange, trading members, and securities business in general.
4.5. 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.


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

The stock broker shall ensure that statement of accounts containing an extract from client ledger for funds & securities along with a statement explaining the retention of funds/securities shall be sent within five days from the date when the account is considered to be settled.

4.7. Regulation 3.10 of NSEIL Regulations (F&O Segment)

The Trading Members must 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.


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.
4.9. **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 the Capital & Derivatives Segment?

**Capital Market Segment**

In capital segment, Trading Members (TM) are required to mandatorily collect VaR margins and extreme loss Margin (ELM) from their clients in an upfront basis. Other margins such as Market-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 to the Stock Exchanges.

**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 the trade. Mark-to-market losses (MTM) shall be collected from clients by T+1 day.

16. What does false reporting of margin/MTM (non-compliance) mean?

Where the margins, including upfront margins / MTM losses, have not been collected/short collected by the Member in any of the applicable modes prescribed above; however, the same has been reported by the Member as collected, it would be construed as false reporting to the clearing corporation.

4.10. **Exchange Circular No. NSE/CMPT/42691 dated November 20, 2019**

4.1 Collection of margins from the clients by TM/CM in cash segment:
4.1.1 The ‘margins’ for this purpose shall mean VaR margin, extreme loss margin (ELM), mark to market margin (MTM), delivery margin, special/additional margin, or any other margin as prescribed by the Exchange to be collected by TM/CM from their clients.

4.1.2 Henceforth, like in the derivatives segment, the TMs/CMs in cash segment are also required to mandatorily collect upfront VaR margins and ELM from their clients. The TMs/CMs will have time till ‘T+2’ working days to collect margins (except VaR margins and ELM) from their clients. (The clients must ensure that the VaR margins and ELM are paid in advance of trade and other margins are paid as soon as margin calls are made by the Stock Exchanges/TMs/CMs. The period of T+2 days has been allowed to TMs/CMs to collect margin from clients taking into account the practical difficulties often faced by them only for the purpose of levy of penalty and it should not be construed that clients have been allowed 2 days to pay margin due from them.)

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

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 the respective client peak margin available with the TM/CM during the day.

3.2. Stockbrokers shall submit the following data as on the last trading day of every week to the Stock Exchanges on or before the next trading day:

B-Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i.e., the amount deposited by stockbroker with the bank to obtain the BG, shall be considered as part of B.

C-Aggregate value of credit balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)

D- Aggregate value of debit balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)

E- Aggregate value of proprietary non-cash collaterals i.e., securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)

MC-Aggregate value of margin utilized for positions of credit balance clients across Stock Exchanges

MF-Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges.
PREVIOUS MCSGFC PROCEEDINGS

5. The Exchange, vide email dated February 15, 2022, granted the Noticee an opportunity for a personal hearing before the Committee. Mr. Prashant Angane – Designated Director, and Mr. Srinivas Yemula – Compliance Officer, on behalf of the Noticee, appeared for the personal hearing and made the following oral submissions:
   a. The Noticee is not providing assured returns to clients. The Noticee made pay-outs to clients based on the clients' requests.

   b. The Noticee shall submit documentary evidence to prove that it is not providing monthly/regular pay-outs to clients.

6. The Committee noted that the Noticee made monthly/regular pay-outs to 25 clients amounting to Rs. 83.57 lakhs from October 2020 to September 2021. These monthly/regular pay-outs to clients were not in the normal course of the stockbroking business and prima facie indicates that the Noticee is providing assured returns to its clients.

7. Since the Noticee is charged with a grave violation concerning assured returns to its clients, the Committee opined that urgent steps had to be taken to protect the interest of the investors. Accordingly, the Committee issued the following directions:

   a. The Noticee shall reply to the show-cause notice dated February 14, 2022.

   b. The Noticee shall submit documentary evidence to the satisfaction of the Exchange in support of its claim that it is not providing assured returns to its clients within 15 days from the date of the order.
c. The Noticee is prohibited from registering new clients in all segments with immediate effect until further direction.

8. The Exchange, vide email dated March 14, 2022, communicated the said directions of MCSGFC vide order dated March 14, 2022.

REPLY TO THE SCN

9. In its reply dated February 24, 2022, to the SCN, the Noticee raised the following preliminary objections:

a. The inspection concluded on February 2, 2022, and the Noticee received the SCN on February 14, 2022. The Noticee did not receive the inspection report or preliminary observation sheet before the issuance of the SCN. This is in gross violation of the provisions of Regulation 7 of NSEIL Regulations.

b. The SCN required the Noticee to specify in its reply if a personal hearing is required. Therefore, the hearing should have been scheduled after written submissions; hence, the due process was not followed.

c. On perusal of the notice of hearing dated February 15, 2022, the Noticee did not find any specific mention of reason as “serious violations” for early scheduling of personal hearing as stated over the telephone. The Noticee failed to understand the events or circumstances that transpired in a single day, making a routine proceeding and violation into one with serious violations.

d. The conclusions of the Exchange regarding the observation of violations of serious nature was arrived at hurriedly by mere ledger scrutiny. Furthermore, the Exchange did not discuss the issue with the Noticee.
e. The inspection team neither communicated nor discussed certain alleged violations included in the SCN either during the inspection or after the conclusion of the inspection.

f. Chapter IV of NSEIL Rules does not contain any express provision relating to the manner of issue of SCN, manner of conduct of a personal hearing, time period for submission of response etc.

g. The procedure followed in the present proceedings is not in accordance with the principles of natural justice, equity, and fair play. Hence, the SCN should be withdrawn, and an inspection report should be issued.

10. The Noticee vide email dated March 08, 2022, provided declarations executed by 9 clients affirming that all investment decisions relating to their trading account are taken by them and that the Noticee does not provide any investment advice. The pay-outs are released based on their instructions to the Noticee via email/telephone; regular/monthly, the pay-outs are not in respect of any private agreement/arrangement with the Noticee and apart from stock broker – client relationship, the Noticee does not have any other relation for regular/monthly pay-outs.

11. The Noticee submitted its reply to the observations/alleged violations as under:

11.1 Monthly/Regular pay-outs to clients

The Noticee released the pay-out at the request and instructions of the respective clients only. The Exchange failed to consider the following facts in arriving at a conclusion:

a. The dates of pay-out across clients and the same client on a month-on-month basis is different.
b. There are no correlations or proportional increases vis-à-vis the receipts.

c. The clients have made pay-out requests via email, and the documentary proofs were available in many cases. Hence, withdrawal of fixed sums by clients does not necessarily mean that the Noticee is providing regular/monthly pay-outs under an artifice.

d. Contract notes, daily margin statements, ledgers, statements of funds and securities on quarterly settlement, and all other communications are sent to clients on their registered email id and mobile number. The Noticee provided communication logs of contract notes, ledgers, statements of funds and securities.

e. The clients' trading activities and profit and loss thereof have not been considered.

f. The cheque/NEFT issued and subsequently returned are shown as fresh receipts and pay-outs in certain cases. The Noticee provided examples of incorrect observations.

11.1.1 Pay-outs are given to the clients at monthly/regular intervals in the case of 25 clients amounting to Rs. 83.57 lakhs.

a. In the case of 15 out of 25 clients, there are no regular or monthly pay-outs as alleged in the SCN. The Noticee provided instance-wise explanations, which are summarized hereunder:

i. Pay-outs have been made on different dates and not on a fixed interval
ii. Different amounts of pay-outs made during the period
iii. No pay-out for a particular month/months
iv. Particular pay-out is towards the quarterly settlement of funds
v. Increase in pay-out is not co-related to or proportional to the receipts
vi. Despite no change in receipts, there is a change in the amount withdrawn
vii. Despite additional receipts, there is no increase in the amounts withdrawn
viii. Entries pertaining to reversal due to cheque bouncing

b. In the case of the remaining 10 clients, the pay-outs were released as per the clients' instructions. The Noticee submitted the copies of the declarations from the clients along with sample pay-out requests.

11.1.2 Monthly/Regular pay-outs made to clients have increased on receipt of additional funds from such clients in the case of 5 clients amounting to Rs.51.44 lakhs.
The Noticee provided instance-wise explanations which are summarized in the paragraph 11.1.1 above.

11.1.3 Monthly/Regular pay-outs made to clients have resulted in a debit balance in the clients' accounts in the case of 2 clients.

The payments resulting in a debit have been erroneously processed by one of its staff who incorrectly considered future pay-out that would have been due on the 2\textsuperscript{nd} or 3\textsuperscript{rd} day instead of T Day while processing pay-out requests. The Noticee provided copies of ledgers showing credits on T+2 day.
Given the above, the Noticee submitted it has not entered into an agreement or arrangement with any of its clients beyond its relationship as a stockbroker and has not undertaken any transactions involving personal liabilities. Thus, the Noticee has not violated Rule 8(3)(f) of SCRR. Further, by releasing the pay-out demanded by the client, the Noticee has adhered to the Code of Conduct prescribed under SEBI (Stockbroker) Regulations, 1992. Therefore, the Noticee has not violated Regulation 4.5.1 and 4.5.2 (b) of NSEIL Regulation.

11.2 Observations related to non-settlement of clients’ funds and securities

11.2.1 Non-settlement of funds and securities of active clients (6 instances of 4 clients)

a. In the case of 5 instances, the observation is incorrect as the Exchange has considered the value of client securities received as early pay-in (EPI). Exchange Circular NSE/INSP/43250 dated January 16, 2020, explicitly excludes EPI of funds and securities from the calculation of the amount required to be settled.

b. In the remaining 1 instance, the client account was settled as of December 7, 2020, and thus there is no violation.

The Noticee provided copies of the retention statements and statements of funds and securities to the Exchange.

11.2.2 Non-settlement of funds and securities of inactive clients (11 instances)

a. In the case of 3 clients, the Noticee released the pay-out by electronic fund transfer; however, the same was unsuccessful due to a change in clients’ bank details and non-update in the Noticee’s records. The
Noticee provided the relevant extracts of the bank statements and bank modification forms.

b. In the case of 2 clients, the Noticee settled the clients’ accounts on alternative dates; therefore, there is no non-compliance. The Noticee provided copies of the retention statements and statements of funds and securities for the said client.

c. In the case of 6 clients, the Noticee settled the client accounts subsequently. The Noticee provided copies of the retention statements for the said clients.

11.2.3 Delay in settlement of clients’ funds and securities (4 clients)

a. In the case of 1 client, the observation is incorrect as the difference in two settlement dates, i.e., December 10, 2020, and January 19, 2021, is less than 90 days.

b. In the case of 2 clients, the Noticee settled the clients’ accounts on alternative dates in the same quarter. Hence, the difference between the two settlements is not more than 90 days.

c. The Noticee provided copies of the retention statement and statement of fund and securities for the said 3 clients. Thus, the Noticee settled 3 out of 4 clients within the prescribed time limit, and hence there is no non-compliance.

11.2.4 Delay in the issuance of the statement of accounts and retention statement (2 clients)
a. In the case of 1 client, the Noticee issued the physical statement to the client's family member, and subsequently, the same was sent to the client vide email dated November 27, 2020. The Noticee submitted a copy of the client’s acknowledgment of the retention statement.

b. In the case of the remaining 1 client, the Noticee sent the statement of accounts and retention statement to the client within 5 working days (October 2, 2021, being a Saturday and a public holiday on account of Gandhi Jayanti and October 3, 2021, being a Sunday).

Given the above, the Noticee submitted that there is non-settlement in the case of 7 out of 507 sample clients verified (50 active clients and 457 inactive clients), constituting less than 2 % of the sample clients verified.

Considering the quantum in terms of numbers and value, the aforesaid non-compliance should be classified as in nature of a procedural lapse. Further, there is no penalty applicable as per Exchange Circular No. NSE/INSP/47457 dated February 25, 2021.

11.3 Incorrect reporting of margin collected from the clients in the F&O segment (2 instances of EOD margin and 3 instances of peak margin)

The Noticee submitted a client-wise reply as under:

a. *Parag Shrikrishna Sapre (Client Code: ISC0050)* - The Noticee received a cheque of Rs.1,00,000/- on July 27, 2021. The branch returned the said cheque immediately on the next day, i.e., July 28, 2021, without presenting the said cheque for clearing due to overwriting in the cheque not countersigned by the client. The margin obligation was pertaining to the period when the said deficient cheque was still in the Noticee’s custody. The Noticee was awaiting
rectification from the client to present the cheque again. Meanwhile, since the client was unable to visit, the client transferred the funds through NEFT. In normal circumstances, the cheque would be cleared within 5 days. The Noticee provided a copy of the bank statement showing the return of the cheque. The Noticee requested the Exchange to consider the situation and drop the observation.

b. Deepali Lalit Venkar (Client Code: IS13026) - The amount of shortfall in peak and EOD margin is minuscule. Considering the amount, the Noticee requested the Exchange to take a lenient view and drop the observation.

c. Prerna Pramod Rane (Client Code: IS5174) - The Exchange did not consider the ledger balance of Rs.70,738/-. Thus, there is no shortfall in peak margin reporting in the said instance. The Noticee submitted a copy of the client ledger.

Given the above, the Noticee has submitted that the Noticee requested the Exchange to take a lenient view considering that the non-compliance was observed for the first time and the instances are minuscule both in terms of number and value.

11.4 Incorrect data submitted for weekly monitoring of clients’ funds

The Noticee submitted specific reasons for variation in reporting as under:

a. Collateral Deposited with Exchange in the form of cash and cash equivalent: The variations were on account of omission by the Noticee to consider collaterals available with the Clearing Member, and the impact of the same on the Noticee is favorable.
b. **Free/ Unblocked collateral deposited with Clearing Corporation**: The variations were on account of omission by the Noticee to consider collaterals available with the Clearing Member, and the impact of the same on the Noticee is favorable.

c. **Total credit balance of all clients**: The underreporting was due to the non-inclusion of the suspense account while reporting. The balance in suspense account pertains to the funds received from unidentified clients, unidentified banks, clients whose account opening was in process or on hold for documentary requirements etc. However, despite underreporting, the value of ‘G’ remains positive.

d. **Total debit balance of all clients**: The variation is on account of the inclusion of error account balance by the Noticee while reporting and the same had no impact on the Noticee.

e. **Value of own securities deposited as collateral with Exchange**: The variation was on account of non-consideration of certain own securities at the time of reporting and the same has a favorable impact on the Noticee.

f. **Margin utilized for the position of credit balance clients**: The variation is on account of consideration of figure based on "Minimum Margin" column of margin file by the Noticee whereas the Exchange calculation is based on "Actual Margin" column of margin file. In the absence of any specific guidelines of the Exchange on consideration of "Minimum Margin" or "Actual Margin", the Noticee conservatively reported the figure based on the "Minimum Margin" which is usually lower than the Actual Margin. The same has a favorable impact on the Noticee.
g. The Noticee further summarized the impact of the aforesaid misreporting on the principles of enhanced supervision as below:

<table>
<thead>
<tr>
<th>Enhanced Supervision Principle</th>
<th>Reported (Rs.)</th>
<th>Revised (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principle 1 “G”</td>
<td>17,97,313</td>
<td>9,87,462</td>
</tr>
<tr>
<td>Principle 2 “I”</td>
<td>(44,08,828)</td>
<td>(43,69,677)</td>
</tr>
<tr>
<td>Principle 3 “J”</td>
<td>(54,87,337)</td>
<td>(50,40,389)</td>
</tr>
</tbody>
</table>

Given the above, the Noticee submitted that despite variation in the reporting, none of the principles of the Enhanced Supervision is affected. Thus, the Noticee is complying with the provisions of the Exchange Circular No. NSE/INSP/33276 dated September 27, 2016.

12. **FORENSIC AUDIT**

In view of the irregularities concerning monthly/regular pay-outs, the Exchange initiated the forensic audit to ascertain whether the Noticee is engaged in running any scheme offering fixed/assured returns. During the pendency of the audit, the External Auditors submitted an interim update on April 7, 2022. Pending the receipt of the final report, the Exchange placed the interim update before this Committee for consideration as listed below:

a. The External Auditors observed certain physical copies of cash receipts collected by the Noticee’s group entity from various individuals.

b. Based on the discussions with Mr. Prashant Angane (Noticee’s Director), it is understood that the cash investments obtained from individual clients were applied for lending to small businesses who need immediate funds, especially cash. No written contracts were entered into for such transactions.
c. The cash receipts are recorded in the physical cash receipts; however, the applications of funds and returns on such investments are not well documented.

d. Based on the preliminary review of the cash receipts, the individual investment value ranges from Rs.10,000/- to Rs.35,00,000/-.

e. There are approximately more than 4,000 physical cash receipts; however, the completeness cannot be confirmed. The investment receipts are pertaining to the calendar years 2018, 2019, 2020 and 2021.

f. A rough estimate of the value of investments collected from individual investors is approximately Rs.148 crores.

g. Schemes have been stated on the cash receipts, for e.g., “Booster with sixer (6-year lock-in period)”.

h. The interest paid/payable on the cash investments is in the range of 30% p.a. to 84% p.a.

i. For preliminary review, cash receipts bearing investments exceeding Rs.5,00,000 were selected on a random sample basis and reviewed. Out of the 50 samples, 4 customers who are also clients of the Noticee with a unique client code (UCC) were identified. Upon review of these 4 client ledgers, there are no cash investments recorded in these ledgers.

j. Pamphlets in the name of “Concunsmart Shares and Stockbroker” stating various referral and incentive schemes for the customers were observed. On the inverse of the pamphlets, a fixed return scheme under the brand “Concunsmart Parivar Investment” is noted.
k. From the various brochures obtained from the Noticee during the visit, it is observed that a pamphlet is seen on “Freedom from EMI”, wherein it is categorically mentioned that the investors are required to open a demat and trading account. The investors must invest 35 times their EMI to get profits by making two mandatory telephonic calls to the Noticee’s trading desk based on the recommendations of the Noticee, and then the client will start getting the returns on monthly basis.

13. NOTICE FOR PERSONAL APPEARANCE

a. In view of the observations emerging from the interim update of the External Auditor and in continuation to the proceedings held under the SCN dated February 14, 2022, the Exchange, vide letter dated April 8, 2022, called upon the Noticee to submit an explanation for the observations and to remain present before the Committee on April 11, 2022.

b. The Noticee, vide email dated April 9, 2022, sought two weeks’ time to reply to the SCN dated April 8, 2022. The Noticee requested the Exchange to produce/inspect the material and records relied upon in the SCN and details of the interim update of the External Auditors. In the meantime, the Noticee requested the Exchange not to take any precipitatory action.

14. PRESENT MCSGFC PROCEEDINGS

a. In the meeting held on February 18, 2022, the Committee directed the Noticee to reply to the SCN and submit documentary evidence supporting its claim that it is not providing assured returns to its clients. In the interim, the Committee prohibited the Noticee from registering new clients in all segments with immediate effect until further directions.
b. The Noticee, vide email dated March 2, 2022, forwarded its reply dated February 24, 2022, to the SCN.

c. The Committee noted that the Noticee raised the preliminary objections to the issuance of the SCN and submitted its reply to the observations/violations mentioned in the SCN.

d. The Committee observed that the Exchange received an interim update regarding the forensic audit of the Noticee carried out by the External Auditors.

e. The Committee perused the Noticee’s submissions in respect of the compliance of its interim directions dated March 14, 2022, the reply to the SCN dated February 24, 2022, the interim update by the External Auditors, the notice requiring the Noticee to appear before this Committee and the Noticee’s response to the said notice.

f. The Exchange, vide email dated April 8, 2022, granted the Noticee an opportunity for a personal hearing. Mr. Prashant Angane – Designated Director, Mr. Srinivas Yemula – Compliance Officer, Ms. Kirti Parabon – Manager, Mr. Sunil Bagwe and Mr. Tushar Pevekar – Authorised Representatives, on behalf of the Noticee, appeared for the personal hearing and made the following oral submissions:

i. The Noticee sought time to provide a detailed response to the show cause notice dated April 8, 2022.

ii. The Noticee has not offered any assured returns to its clients in the capacity of a broker.

iii. Regarding the reason for pulling down the scheme from the Concunsmart Parivar website, the Noticee submitted that the said website pertains to a business not related to broking operations of the Noticee. The Noticee
inadvertently posted the scheme on the said website and thereafter withdrew the same. The Noticee has not circulated the documents relating to the scheme.

iv. Regarding pay-out of Rs.50,000/- to one of the sample clients, viz. Ms. Sarika Ghag, every month, the Noticee submitted that these pay-outs were transactions executed either by sale of client securities or withdrawal of the available balances lying with the Noticee. The Noticee made the pay-outs based on the client’s request.

v. Regarding pay-out of odd amounts multiple times, the Noticee submitted that it started its broking business 2 years back. Therefore, it is unaware of the regulatory compliances.

vi. Regarding the settlement of clients’ accounts, the Noticee submitted that it had settled all its clients.

vii. The Noticee sought 15 days to submit an explanation for the observations of the External Auditor.

viii. Regarding the pamphlet on “Concunsmart Special Demat Account,” the Noticee submitted that it never used it though it printed the said pamphlet.

ix. Many sub-brokers of many topmost brokers offer such schemes as is evident from various newspapers, viz. Loksatta. As the Noticee recently became a broker from a sub-broker, it was unaware of the compliances at that point in time.
CONSIDERATION & FINDINGS

15. At the outset, it is necessary to consider the preliminary objections set out in the paragraph mentioned above-

a. Regarding Noticee’s objection that the inspection team neither communicated nor discussed certain alleged violations included in the SCN either during the inspection or after the conclusion of the inspection, the Committee finds that on completing the inspection, the Exchange issued the SCN to the Noticee. The SCN included the non-compliances of the regulatory provisions and detailed exhibits for each non-compliance observed during the inspection. The SCN granted an opportunity to the Noticee to show cause why appropriate disciplinary actions should not be initiated against the Noticee for the alleged violations. Therefore, the Noticee’s contention is not tenable.

b. Regarding Noticee's contention that they did not receive the inspection report or preliminary observation sheet before the issuance of the SCN, the Committee finds that the Regulation 7 of NSEIL Regulations (CM, F&O, and CD segments) provide notice for inspection, obligations of the Trading Member towards inspection, submission of the report etc. However, the issuance of a preliminary observation sheet is not mandated by any of the Regulations of the Exchange. Therefore, the Noticee's contention that the issuance of a preliminary observation sheet is mandated by Regulation 7 is incorrect. Further, Regulation 7.4.3 (c) provides that where the Exchange is of the opinion that there is no requirement of notice, it may direct the taking up of the inspection without notice as well. Therefore, the Committee finds that though the disciplinary action could have been taken without notice or without an opportunity for personal hearing in certain circumstances as of this, the Noticee was given sufficient opportunity to submit its explanation which it has submitted without any credible evidence to refute the charges.
c. Regarding the Noticee’s contention that the conclusions of the Exchange regarding the observation of violations of serious nature have been arrived at hurriedly by mere ledger scrutiny, the Committee finds that the client ledgers contain the transactions between the client and broker. Therefore, a review of ledgers is the first and most basic need/audit method. From the review of ledgers, it has been observed that the pay-outs are made to 9 clients at 2.86% per month and 8 clients at 3% per month. Also, in order to further investigate the matter, a forensic audit of the books and records of the Noticee is underway.

16. Regarding monthly/regular pay-outs to the clients, the Committee finds that-
   a. The Noticee contended that the pay-outs have been released at the requests and instructions of the clients. The Noticee provided the email requests in support of its contention. Upon perusal of the clients' emails, it was found that the email did not provide any clear instructions and upon perusal of the clients’ ledgers, it is observed that the Noticee provided a fixed percentage of interest every month on the investments. Such assured returns have no co-relation with the trades executed by the respective clients. Therefore, the Noticee's contention is not acceptable.

   b. The Noticee contended that the pay-out dates across clients and same clients every month are different. In this regard, it is observed that although the pay-out is not made on the same date every month, fixed pay-outs are made at monthly rests. Such assured returns have no co-relation with the trades executed by the respective clients.

      i. In the case of client code IS10015, Rs.33,000/- has been paid every month from January 2021 to September 2021.

      ii. In the case of Client Code IS0327, Rs.14,791/- has been paid every month from December 2020 to September 2021.
iii. In the case of Client Code IS0447, Rs.17,511/- has been paid each month from October 2020 to September 2021.

c. The Noticee contended that there are no co-relations or proportional increases vis-à-vis receipts. In this regard, it is observed as under:

i. In the case of Client Code IS11425, the pay-out increased from Rs. 26,400/- and Rs. 25,000/- in April 2021 and June 2021, respectively to Rs. 27,000/- per month in August 2021 and September 2021 after the client introduced Rs. 3 lakhs in June 2021. Post the receipt of Rs. 3 lakhs in June 2021, the total receipts from the said client amounted to Rs. 9 lakhs. Thus, the Noticee paid a 3% per month return to the client in August 2021 and September 2021.

ii. In the case of Client Code IS10066, the pay-out in January was Rs.10,500/- which is 3% per month of the amount received from the client i.e., Rs.3.5 lakhs. The pay-out increased to Rs.15,000/- after the client introduced Rs.1.5 lakhs on December 31, 2020, which again amounts to 3% per month of the total amount received from the client i.e., Rs.5 lakhs.

iii. In the case of Client Code ISC0031, the Noticee made pay-outs at 3% per month on the amount received from the client i.e., Rs.3 lakhs on March 17, 2021. The Noticee paid Rs.4,500/- for March 2021 on April 12, 2021; Rs.18,000/- for April 2021, May 2021, and June 2021 on June 7, 2021. Further, the pay-out increased to Rs.13,500/- for August 2021 when an additional amount of Rs.1.5 lakhs was received from the said client on August 4, 2021.

d. The Noticee’s contention that contract notes, daily margin statements, ledgers, statements of funds and securities on quarterly settlement, and all other communications are sent to clients on their registered email id and mobile number and that the trading activities of the clients and profit and loss thereof
have not been considered, is not relevant to the charge as the same is the mandatory requirements for any broker with regard to a trade that is executed through him.

e. The declarations provided by the Noticee for 9 clients stating that all investment decisions relating to their trading account are taken by them and that the Noticee does not provide any investment advice, pay-outs are released based on their instructions to the Noticee via email / telephone; regular / monthly pay-outs are not in respect of any private agreement / arrangement with the Noticee and apart from stock broker – client relationship, they do not have any other relation for regular / monthly pay-outs are dated between March 02, 2022 and March 07, 2022, and seem to be an afterthought.

f. The Noticee's contention that the Monthly/Regular pay-outs made to clients have resulted in a debit balance in the clients' accounts in the case of 2 clients are on account of erroneous processing by its staff and that the pay-out was made against credit bills posted on the subsequent day in 2 instances. In the case of 1 instance pertaining to Client Code IS0327 of pay-out date March 30, 2021, the Noticee did not provide any specific comments. Also, the next bill was posted in this case on April 26, 2021. The contention of the Noticee that pay-outs were made erroneously is not acceptable and proves that pay-outs are made to clients even in cases where there are inadequate funds in the clients' accounts.

Thus, the Noticee has, prima facie, acted in violation of the following provisions of the Exchange Rules/ Byelaws/ Regulations:

i. Regulation 4.5.1 and 4.5.2 (b) of Part A of Exchange (CM) Regulations Regulation 4.5.1 and 4.5.2 (d) of Exchange (F&O) Regulations

ii. Rule 8(3)(f) of SCRR Rules, 1957

iii. Schedule II of the SEBI (Stockbrokers and Sub-Brokers) Regulations, 1992
17. The forensic audit by the external auditor and the examination of the preliminary update indicates as under:

a) Physical copies of cash receipts collected by the Noticce’s group entity were from various individuals. It is reported that the Director of the Noticee, Mr. Prashant Angane, has accepted that cash investments obtained from individual clients were applied for lending to small businesses who need immediate funds, especially cash. No written contracts were entered into for such transactions.

b) There are approximately more than 4,000 physical cash receipts; however, the completeness cannot be confirmed. The investment receipts are pertaining to the calendar years 2018, 2019, 2020 and 2021. Based on the preliminary review of the cash receipts, the individual investment value ranges from Rs.10,000 to Rs.35,00,000 and a rough estimate of the value of investments collected from individual investors is approximately Rs.148 crores. The interest paid/payable on the cash investments is in the range of 30% p.a. to 84% p.a.

c) For preliminary review, cash receipts bearing investments exceeding Rs.5,00,000 were selected on a random sample basis and reviewed. Out of the 50 samples, 4 customers who are also clients of the Noticee with a unique client code (UCC) were identified. Upon review of these 4 client ledgers, there are no cash investments recorded in these ledgers.

d) Further, Pamphlets in the name of “Concunsmart Shares and Stockbroker” stating various referral and incentive schemes for the customers were observed. On the inverse of the pamphlets, a fixed return scheme under the brand "Concunsmart Parivar Investment" is noted. From the various brochures which were obtained from the Noticce during its visit, it is
observed that a pamphlet is seen on "Freedom from EMI", wherein it is categorically mentioned that the investors are required to open a demat and trading account. Investors have to invest 35 times of their EMI to get profits by making two mandatory telephonic calls to their trading desk basis their recommendations and then client will start getting the returns on monthly basis.

e) The Committee finds that as per the Noticee’s submission, it is a Private Limited Company engaged in the business of providing Stock Broking and Depository Services. Noticee had started its operations in March 2019 and is currently serving around 2500 clients. The Noticee’s contention that there have been no complaints against it from any investors and has never defaulted in the payment to clients or Exchange cannot be a ground to overlook the fact that the Noticee is engaged in collecting cash from individual investors when the Noticee is registered as a Member of the Exchange. The Committee finds that there is impending risk to the entire eco-system when the registered members of the Exchange are indulging in such activities which are potentially amounting to misconduct.

18. The Noticee was already given an opportunity to produce documents in support of the contention that it was not providing any assured returns. The materials for which inspection is sought are those which are provided to the auditors by the Noticee. In any case, an inspection of such documents can be provided. However, as the update is preliminary and considering the observations, we find that there are material information in the update which if shared is likely to prejudice the completion of the inspection and is detrimental to the interest of the investor clients.

19. The Noticee was also shown the copies of the pamphlets and details of schemes offering assured returns during the hearing given to the Noticee on April 11, 2022.
20. From the evidence brought before the Committee, the Noticee has, prima facie, engaged in assured return schemes. Such schemes are not permitted by Exchange Rules and Regulations and do have the potential to evolve into massive disputes/losses for the investors who have invested in the said schemes. Therefore, steps must be taken to prevent the Noticee from soliciting and collecting funds from investors and carrying on such assured return schemes. In view of the above, it becomes necessary to take an exemplary action.

21. In view of the violation regarding assured returns, the Committee decided to pass an interim order without going into the merits of other observations/alleged violations mentioned in the SCN, which shall be dealt with subsequently by a separate order.

**DECISION**

22. Accordingly, the Committee issues the following interim directions:

   a. The trading terminals of the Noticee shall be disabled in all segments with immediate effect.

   b. The interim direction prohibiting the Noticee from registering new clients in all segments shall continue to be in force until further direction.

   c. The Noticee shall extend co-operation to the External Auditors for completion of the forensic audit.

   d. In case the Noticee has any open positions in the Exchange-traded derivative contracts, the Noticee can close out/square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. It is also clarified that the Noticee can settle the pay-in and pay-out
obligations in respect of transactions, if any, which have taken place before the date of this order.

e. Upon the completion of the forensic audit, the Noticee shall be granted a final opportunity in which the other observations/alleged violations will be dealt with.

Sd/-
Mona Bhide
(Chairperson)

Sd/-
Anuradha Rao
(Committee Member)

Sd/-
K Narasimha Murthy
(Committee Member)

Sd/-
Ranganayakulu Jagarlamudi
(Committee Member)

Sd/-
Vikram Limaye
(Committee Member)

Date: April 17, 2022