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 May 31, 2021

In the matter of Trading Member M/s. First Futures and Stocks Private Limited

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

ALSO PRESENT:
Ms. Priya Subbaraman - Chief Regulatory Officer (By Video Conferencing)
Dr. Dinesh Kumar Soni - Senior Vice-President – Regulatory (By Video Conferencing)
Mr. Suresh Nair - Vice President – Enforcement – Regulatory (By Video Conferencing)

1. M/s. First Futures and Stocks Private Limited ("First Futures"/"Member") is a Member registered with the National Stock Exchange of India Limited ("Exchange") in the Capital Market ("CM") and Future and Options ("F&O") since April 2008 and Currency Derivatives ("CD") segment since August 2008.

2. The Exchange conducted a limited purpose inspection of the books of accounts and records of First Futures during the months of January 2021 and February 2021. Post-inspection, the Exchange issued a letter of observations bearing reference no. NSE/INSP/CMFOCDS/LPI/20-21/LO/12921 dated February 25, 2021 to First Futures for drawing its attention towards the observation and violation of corresponding Exchange Regulations. In response to the Exchange letter of observation, First Futures has submitted its reply vide its letter dated March 03, 2021.

3. The inspection observation for which the letter of observation is issued pertains to a shortfall of clients' funds involving an amount of Rs. 1.01 crores, Rs. 0.96 crores and Rs. 0.91 crores as on January 22, 2021, February 09, 2021, and February 19, 2021, respectively.

4. Past MCSGFC References

4.1 The matter was placed before the Member and Core Settlement Guarantee Fund Committee ("the Committee") of the Exchange in its meeting dated March 19, 2021. The representatives of First Futures were given an opportunity to represent its case before the Committee vide Exchange email dated March 13, 2021. The meeting was attended by Mr. D. Gunasekar, Director, and Mr. S. Sathishkumar,
Compliance Officer of the Member, through Video Conferencing, who made the following oral submissions:

i. The shortfall occurred on account of business loss and on account of the pandemic, low brokerage, etc. Few investors are ready to invest in the company.

ii. First Futures has been carrying on the business for the last 14 years from 2008. However, investor complaints have been observed for the first time in the current year. The said complaints involved a miniscule amount of less than Rs. 10 lakhs and have been resolved as on date.

iii. Internal audit observations have also been observed on account of this shortfall.

iv. First Futures has requested to provide a time of 25 to 30 days to recoup the shortfall of client funds completely.

4.2 The Committee, after considering the written and oral submissions of First Futures passed the interim direction dated April 12, 2021, wherein:

i. A time period of 30 days from the date of this order be granted to First Futures to recoup the shortage of client funds and provide satisfactory evidence of having recouped the shortages.

ii. In the interim, the trading terminals of First Futures were directed to be disabled from the Futures & Options Segment with immediate effect and also shall continue to remain disabled until the shortage of client funds has been recouped completely and satisfactory evidence for the same has been submitted to the Exchange.

5. The matter was again placed before the Committee in its meeting held on May 31, 2021. The representatives of First Futures were given an opportunity to represent its case before the Committee vide Exchange email dated May 24, 2021. The meeting was attended by Mr. D. Gunasekar, Director of First Futures, through Video Conferencing, who while making the following oral submissions also reiterated the submissions made during the last hearing before the Committee on March 19, 2021.

5.1 It was further submitted that though some of the investors who were ready to invest did not come forward due to the situation of pandemic.

5.2 With respect to the query of the Committee as to how the shortfall occurred, First Futures submitted that the shortfall occurred on account of business loss and on account of the pandemic, low brokerage, etc.

5.3 With respect to the query of the Committee, as to whether they intend to carry on with the business and how they propose to settle the clients, Mr. Gunasekaran merely stated that they are unable to find any investors.

5.4 Mr. Gunasekaran also responded to the Committee that he has no further submission to make.

6. At the outset, it is appropriate to produce below the relevant legal provisions, including circulars alleged to have been violated by First Future:

6.1. Regulation 4.5.3 (e) of the NSEIL F&O and CM Regulations states that:

“No Trading Member or person associated with a Trading Member shall make improper use of constituent’s securities or funds.”
6.2. Exchange circular no. NSE/INSP/29096 dated March 11, 2015, states that:
"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."

6.3. Exchange circular no. NSE/INSP/2016/33276 dated September 27, 2016, states that -
“Stock Exchanges shall put in place a mechanism for monitoring of clients’ funds lying with the stockbrokers on the principles enumerated below:
Principle: The total available funds, i.e., cash and cash equivalents with the stockbroker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients’ funds as per ledger balance (C)”

Stock Exchanges shall calculate the difference, i.e., G as follows -

\[ G = (A+B) - C \]

If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilization of clients' funds for other purposes, i.e., funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges."

7. Consideration of alleged violations, reply of First Futures, and findings of the Committee:

7.1. With regard to observation pertaining to Shortfall of clients’ funds
a. The Exchange on verification of the data submitted under the weekly Enhanced Supervision submissions as on January 22, 2021, February 09, 2021, and February 19, 2021, by First Futures, observed that there was a misuse of clients' funds on account of funds of credit balance clients being used for the pay-in obligation of debit balance clients. This resulted in a shortfall of clients' funds to the tune of Rs. 1.01 crores, Rs. 0.96 crores and Rs. 0.91 crores as on January 22, 2021, February 09, 2021, and February 19, 2021, respectively.

b. In response to the Exchange's letter of observation dated February 25, 2021, First Futures, vide its response dated March 03, 2021, to the said charge, has submitted that the observed shortfall occurred on account of business loss. Also, it has tried a lot to recoup the funds but could not recoup the shortfall of client funds.

c. The Committee finds as under:
   i. First Futures could not demonstrate that the funds were adequately available with it to pay off its clients. The non-availability of client funds is a clear indication of a shortage of client funds. The Committee also finds that though First Futures has sought time to recoup the shortages which
was granted, could not take any steps to demonstrate that it is able to recoup the client funds or has a concrete plan for such recoupment of shortages.

ii. While First Futures has accepted that there is a shortfall of client funds and has attributed the same to business losses, they do not have any concrete plan to settle the clients. It is further observed from the submissions made during the personal hearing, that First Futures could not manage to revive it’s business as their efforts to get investors did not fructify. It is therefore, sufficiently evident that First Futures is not in a position to settle it’s clients and all their efforts to revive it’s business have failed.

iii. The Committee also finds that First Futures is a repeat violator. The violation pertaining to a shortfall of client funds was observed during the inspection conducted in the past year by the Exchange. First Futures was issued a warning for the violations observed during the inspection conducted for the period January 01, 2018, to December 31, 2018, and January 01, 2019, to December 31, 2019, and was levied a monetary penalty of Rs. 1,03,000/- for the violations observed during the inspection conducted for the period January 01, 2020, to May 31, 2020. Repetition of violations involving clients’ assets reflects a lack of financial discipline and professionalism in the conduct of business by First Future, which poses a serious threat to the market and market participants.

iv. The Exchange, in all the action letters sent to First Futures while communicating the aforesaid penalties, has also directed as under:

"You are requested to ensure that non-compliance(s) with the observations noted in the said inspection do not reoccur in the future. As you are aware, the fine/penalties would be levied at an escalated level in case repeat non-compliance(s) are observed by the Exchange. Hence, kindly take necessary corrective measures to ensure proper compliance with the relevant Rules, By-Laws and Regulations of the Exchange and the circulars and directives issued thereunder."

v. The Committee notes that Trading Members need to ensure that the total available funds with the Trading Member and with the Clearing Corporation/Clearing Member should always be equal to or greater than the clients’ funds as per ledger balance. Thus, First Futures has violated the provisions of Regulation 4.5.3 (e) of NSEIL Regulations (CM and F&O Segments), Exchange Circular No. NSE/INSP/29096 dated March 11, 2015, and Exchange Circular No. NSE/INSP/2016/33276 dated September 27, 2016.

8. As per Exchange records, as on May 21, 2021, 35 investor complaints involving an amount of Rs. 62 lakhs were pending to be resolved by First Futures. The Committee notes that Exchange, vide email dated April 12, 2021, had conveyed the interim direction of the Committee granting time of 30 days to recoup client fund shortfall, but is unable to fulfil its obligations and recoup the client fund shortfall.
9. The Committee notes that the trading terminals of First Futures in the F&O segment were disabled with effect from April 12, 2021, pursuant to the interim direction of the Committee.

10. Regulation 4.5.3 (e) of NSEIL Regulations (CM F&O Segments) states that no Trading Member or person associated with Trading Member shall make improper use of constituent's securities or funds. Hence, it can be concluded that First Futures has failed to abide by the provision mentioned above and has thus violated the Code of Conduct stipulated under Regulation 4.5 of NSEIL Regulations (CM & F&O Segments).

11. The Committee further notes that as per Byelaw 1(a) of Chapter XII of NSEIL Byelaws, a Trading Member may be declared a defaulter by direction/circular/ notification of the Relevant Authority of the trading segment if he is unable to fulfill its obligations. SEBI, vide its letter dated August 01, 2016, has advised the Exchange to specifically declare a trading member a defaulter along with expulsion in case the liabilities of the trading member stand out to be higher than its assets at the time of expulsion.

12. Trading Members acting as a securities market intermediary are expected to protect the investors’ interest in the securities market in which they operate. They must maintain high standards of integrity, promptitude, and fairness in their business dealings and must not be motivated purely by prospects of financial gain.

13. The Committee notes that First Futures was given a fair and reasonable opportunity to present its case as per the regulatory provisions. However, First Futures has failed to provide any satisfactory explanation to the charges levelled against it as mentioned above.

14. Trading Members hold clients’ assets in their fiduciary capacity. Hence, Trading Members must ensure that all obligations imposed on them by the various acts, rules, and regulations are complied. The Committee is of the view that First Futures, as a Trading Member of the Exchange, while handling the clients’ assets, has a responsibility as trustee and is expected to exercise due diligence while dealing with the client's assets. Therefore, the Committee finds that First Futures lacks financial discipline and has failed in its fiduciary capacity in its obligation to deal with the clients’ assets. The Committee finds that First Future’s acts display a lack of trusteeship and does not instil confidence.

15. The Committee finds that First Futures has not taken sufficient steps to resolve its investor complaints nor has submitted any action plan to recoup the shortfall of funds. The Committee, however, finds that First Futures is casual in its approach and appears to be treating non-compliances as the cost of business which is entirely unacceptable. The Committee finds that First Futures has been associated with the capital market for a long and is well acquainted with the provisions governing the capital market’s regulations.
16. First Futures has failed to provide a satisfactory explanation to the charges levelled against it as discussed above. The Committee is therefore of the view that in the facts and circumstances of the instant case, First Future is:
   a. Unable to fulfil its obligations towards investors.
   b. Has failed to demonstrate its ability to fulfil/discharge its financial obligations and liabilities.
   c. Misused clients’ assets.
   d. Repeat violator.
   e. Continuation of First Future as a member of the Exchange would pose a serious threat to the Exchange and would be detrimental to the market and the interest of investors.

17. Exchange Circular No. NSE/INSP/36248 dated November 06, 2017, provides for the penalty to be applied in respect of various violations as identified during the inspection of the members. The said circular *inter alia* states that the penalties/disciplinary action(s)/charges are indicative in nature and could undergo a change in specific cases depending on the frequency and gravity of the violations. The penalties/disciplinary action(s)/charges actually levied are decided by the Relevant Authority of the Exchange. Penalty/disciplinary action in respect of violations having a high impact would be dealt with on a case to case basis depending on the seriousness and gravity of such violations.

18. First Futures has failed to satisfactorily address concerns of the Exchange in relation to its precarious financial condition. The Committee is of the view that continuance of business by First Future will pose a risk to the market in general and specifically investors interest.

**DECISION**

19. Accordingly, **M/s. First Futures and Stocks Private Limited.** be expelled from the membership of the Exchange under Rules 1 and 2 of Chapter IV of NSEIL Rules and declared defaulter under Byelaw 1(a) of Chapter XII of the NSEIL Byelaws and as per SEBI letter dated August 01, 2016, after giving three weeks' notice from the date of this order.

20. The matter was discussed in the Committee meeting held on May 31, 2021, through video conferencing, and at this stage, it is not possible to sign a copy of this order, nor the Exchange can issue a certified copy of the order. Therefore, an electronic copy of this order sent from the Exchange's email id shall be treated as a signed copy for all purposes.

Sd/-
Mona Bhide
Chairperson

Sd/-
Ms. Anuradha Rao
Committee Member

Sd/-
Mr. K Narasimha Murthy
Committee Member

Sd/-
Vikram Limaye
Committee Member

Sd/-
Ranganayakulu Jagarlamudi
Committee Member

Date: September 24, 2021

This is an electronic letter which does not require signature