

**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 29, 2024**

**In the matter of Trading Member
Artha Vrddhi Securities Limited**

CORAM:

| | |
|----------------------|--------------------|
| Mr. S Ravindran | - Chairperson |
| Ms. Abhilasha Kumari | - Committee Member |
| Ms. Mamata Biswal | - Committee Member |
| Mr. Essaji Vahanvati | - Committee Member |

ALSO PRESENT:

| | |
|----------------------|--------------------------------|
| Mr. Piyush Chourasia | - Chief Regulatory Officer |
| Ms. Renu Bhandari | - Senior Vice President |
| Ms. Sonali Karnik | - Vice President - Enforcement |
| Mr. Janardhan Gujran | - Vice President - Enforcement |

BACKGROUND

1. **Artha Vrddhi Securities Limited ("Noticee")** is a Trading Member registered with the National Stock Exchange of India Limited ("**Exchange**" / "**NSEIL**") in the Capital Market ("**CM**") segment since January 1995, Futures & Options ("**F&O**") segment since June 2003, and Currency Derivatives ("**CDS**") segment since June 2012.
2. The Exchange received 4 complaints from the clients of the Noticee regarding unauthorized trading and non-receipt of funds, wherein the complainants were claiming an amount of Rs. 4.31 crores. The Exchange referred these complaints to the Grievance Redressal Committee ("**GRC**") of the Exchange. The GRC admitted the 4 investor complaints and admitted an amount of Rs. 2.17 crores. All 4 matters were decided by GRC in the month of November 2021.
3. The Noticee, vide its email dated November 11, 2021, informed the Exchange its intention to file an arbitration against the GRC order dated November 10, 2021, admitting an amount of Rs. 1.54 crores in the matter of one of the 4 complainants,

Blusea International. Subsequently, the Noticee, vide its email dated November 27, 2021, withdrew its intention to file the arbitration.

4. The Exchange requested the Noticee to deposit the admitted amount of Rs. 1.54 crores in terms of the GRC order dated November 10, 2021, pertaining to Blusea International. As per Exchange Circular No. NSE/ISC/46858 dated December 31, 2020, the Exchange informed the Noticee that in the event of failure to deposit the admissible claim, the said amount shall be appropriated from the deposits of the Noticee available with the Exchange and such appropriation of deposits will lead to insufficient deposits of Noticee which may result in withdrawal of its trading rights. The relevant extracts of the Circular are as under:

- “8. GRC shall decide claim value admissible to the complainant, upon conclusion of the proceedings of GRC. Upon receipt of the GRC directions, for cases where the GRC has decided admissible claim in favour of the investor, the Exchange shall debit / block 100% of the amount decided as admissible by the GRC out of the deposit of the Member available with the Exchange or in case where the member authorizes the Exchange to utilize the deposit available with the clearing corporation, the deposits available with the clearing corporations shall be utilized. If on account of such debiting/blocking, the deposits of the Member falls below the requirement, the Members’ ability to trade may get impacted. Intimation of debiting/blocking will be given to Member.*
- 9. The Member has to inform the Exchange through a letter / e-mail id of the compliance officer / dedicated e-mail Id, whether it intends to pursue the next level of resolution i.e. Arbitration, within 7 days from the date of receipt of the Grievance Redressal Committee (“GRC”) direction.*
- 10. If no intimation is received within the aforesaid 7 days, the amount decided as admissible by the GRC shall be released to the investor out of the amount debited / blocked from the Member’s deposits available with the Exchange / Clearing Corporation. Intimation of release will be given to Member. If confirmation of settlement of claim is received from the Investor before the release of funds to the Investor by the Exchange, the amount debited / blocked shall be refunded / unblocked to the Member.”*

However, the Noticee failed to deposit the admissible claim amount despite several reminders from the Exchange dated November 16, 2021, November 18, 2021, November 26, 2021, November 29, 2021, and December 01, 2021.

5. Since the Noticee failed to make payments even after several reminders, the Exchange blocked Rs. 57.50 lakhs out of the deposits of the Noticee available with the Exchange as per Exchange Circular No. NSE/ISC/46858 dated December 31, 2020, towards the admissible claim. The Exchange, vide email dated December 09, 2021, informed the Noticee that its trading terminals will be disabled in all segments w.e.f. December 10, 2021, on account of insufficient deposits available with the Exchange.
6. Subsequently, the Exchange received 4 additional complaints involving a claim amount of Rs. 46.83 lakh against the Noticee. Out of these 4 complaints, 2 complaints dated January 13, 2022, having claim value of Rs. 0.64 lakh were settled by the Noticee. However, 2 complaints amounting to Rs. 46.18 lakhs were pending to be resolved.

LIMITED PURPOSE INSPECTION

7. The Exchange received 8 investor complaints against the Noticee since April 2020. Out of the 8 investor complaints, 5 investor complaints were related to unauthorized trading involving Rs. 4.46 crores. Hence, the Exchange conducted a limited purpose inspection of the books and records of the Noticee from October 2021 to December 2021, covering the period from April 01, 2020, to December 17, 2021. Post-inspection, the Exchange issued a show-cause notice dated January 5, 2022 ("**SCN-1**"), to the Noticee for the observed non-compliances. The Noticee, vide emails dated February 11, 2022, and February 17, 2022, replied to the SCN-1.
8. The observations/alleged violations mentioned in the SCN-1 are summarized hereunder:
 - a. Funds of credit balance clients used to meet the settlement obligations of debit balance clients or own purposes to the extent of Rs. 1.49 crores as of December 17, 2021, thereby violating Principle 1 of the Enhanced Supervision of Stockbrokers
 - b. Shortfall in net worth as of March 31, 2021, and September 30, 2021, wherein the networth was (-ve) Rs. 1.67 crores and (-ve) Rs. 1.48 crores, respectively, which are below the minimum net worth prescribed for the Trading Members by the Exchange
 - c. Non-settlement of clients' funds and securities as of October 08, 2021, as under:

- active clients involving Rs. 42.67 lakhs and,
 - inactive clients involving Rs. 5.29 lakhs
- d. Non-reconciliation of securities as of November 06, 2021, involving Rs. 26.22 lakhs
- e. Improper maintenance of books of accounts, viz. client ledgers as per the prescribed standard format
- f. Non-maintenance of appropriate evidence regarding the orders placed by the clients in all the 8 instances of 3 clients selected for sample scrutiny
- g. Non-maintenance of clients' registration documents containing all the prescribed mandatory documents in case of 2 out of 8 clients selected for sample scrutiny

SEBI CIRCULAR ON STANDARD OPERATING PROCEDURE

9. The total amount due from the Noticee towards the GRC orders and investors complaints was Rs. 2.63 crores as on February 02, 2022. The Exchange observed that the funds available with the Noticee were insufficient to meet its obligation towards GRC orders and complaints. The details are as under:

| Sr. No | Date of GRC Order | Date of Complaint Registration | Client Name | Admissible Claim / Complaint amount (Rs) |
|--------------|-------------------|--------------------------------|---------------------------|--|
| 1 | 10-Nov-21 | - | Blueseas International | 1,54,24,446 |
| 2 | 24-Nov-21 | - | Manish Indukumar Shah HUF | 33,43,554 |
| 3 | 24-Nov-21 | - | Manish Indukumar Shah | 26,94,726 |
| 4 | 24-Nov-21 | - | Nisha Jitendra Gupta | 3,06,208 |
| 5 | - | 27-Dec-21 | Jitendra Kundanlal Gupta | 43,64,860 |
| 6 | - | 27-Jan-22 | Vandana Kalpesh Mistry | 2,54,000 |
| TOTAL | | | | 2,63,87,794 |

10. As per SEBI Circular No. SEBI/HO/MIRSD/DPIEA/CIR/P/2020/115 dated July 01, 2020, on Standard Operating Procedure in case of Trading Member / Clearing Member leading to default ("**SEBI SOP Circular**"), if the Stock Exchange is of the view that the Trading Member is likely to default in the repayment of funds / securities to its clients, then it can invoke the SEBI SOP Circular and take actions pursuant thereto. The conditions are:

- a) There is shortage of funds / securities payable to the clients by Rs. 10 crores (Stock Exchange may have their own criteria) and / or
 - b) ...
 - c) There is sudden increase in the number of investor's complaints against the Trading Member for non-payment of funds and / or transfer of securities
11. On February 02, 2022, the Exchange observed the sudden increase in number of investors' complaints against the Noticee pertaining to non-receipt / delay in funds / unauthorized trades and Noticee's inability to meet its obligation towards GRC orders and complaints. Considering the above, the Exchange invoked the provisions of SEBI SOP Circular on February 02, 2022, and informed the other Market Infrastructure Institutions about the same.
12. On February 03, 2022, the Exchange vide email informed the Noticee about the invocation of SEBI SOP Circular.
13. On February 04, 2022, the Exchange held a meeting with Mr. Dharendra Shukla - Promoter, and Mr. Anurag Shukla - Director of the Noticee. The Exchange, vide its email dated February 04, 2022, instructed the Noticee to provide a plan of action with timelines for infusion of capital and repayment of outstanding funds and securities to creditors, including compliance with the GRC orders.
14. On February 05, 2022, the Noticee vide its email submitted as under:
- a. The Noticee filed an arbitration proceeding against the GRC order passed in favour of Bluesea International.
 - b. The Noticee is in conversation with Mr. Manish Shah, complainant, to resolve the complaint of the client and requested time till February 28, 2022.
 - c. The Noticee implemented various internal controls to ensure financial and accounting information integrity, promote accountability, prevent fraud that occurred in the previous years, and to avoid future defaults.
 - d. A petition filed for recovery of Rs. 2.15 crores from Infrastructure Leasing & Financial Services ("**IL&FS**") are pending before the Hon'ble National Company Law Appellate Tribunal and the order is expected to be received by March 2022.

- e. The Noticee has funds lying with its Clearing Member, viz. Globe Capital Market Limited, which are not released despite multiple requests.
 - f. The Noticee is in the process of infusing capital worth Rs. 2.5 crores in its business on or before February 28, 2022. In order to arrange additional funds for business operations, the Noticee's promoter, Mr. Dharendra Shukla, has put his personal property on sale.
15. On February 07, 2022, the Exchange conducted a limited purpose inspection of the books and records of the Noticee and observed that there was a shortfall of clients' funds amounting to Rs. 1.91 crores. In view of the observed shortfall of clients' funds and in compliance with Clause 4.14 of the SEBI SOP Circular, the Exchange appointed an external auditor to conduct a forensic audit of the books and records of the Noticee. The review period of audit was from January 1, 2019, to February 28, 2022.

PREVIOUS PROCEEDINGS BEFORE THE COMMITTEE

16. The matter was placed before the Committee as under:

16.1. Committee meeting held on February 18, 2022

- a. The Exchange vide email dated February 11, 2022, granted the Noticee an opportunity of personal hearing before the Committee in its meeting held on February 18, 2022.
- b. Mr. Anurag Shukla - Director, Mr. J. J. Bhatt, Ms. Rinku Valanju and Mr. Pratham Masurekar - Authorized representatives, appeared on behalf of the Noticee and made the oral submissions wherein the Noticee requested a period of 45 days to recoup the shortfall of clients' funds. Further, the Noticee requested that the SEBI SOP Circular should not be invoked in the present case.
- c. The Committee, after considering the submissions of the Noticee, issued the following interim directions:
 - The trading terminals of the Noticee shall continue to remain disabled in terms of the SEBI SOP Circular

- The Noticee be granted 45 days from the date of the direction to recoup the shortfall of client funds and shortfall in net worth to the satisfaction of the Exchange
 - The Noticee be granted an opportunity to file its representation within 15 days from the date of the direction for the action initiated under the SEBI SOP Circular
- d. The abovementioned interim directions were communicated to the Noticee vide Exchange email dated February 28, 2022.
- e. The Noticee, vide email dated March 22, 2022, submitted its representation for the action initiated under the SEBI SOP Circular.
- f. The Noticee, vide email dated April 14, 2022, requested for additional 45 days to recoup the shortfall of clients' funds and shortfall in net worth to the satisfaction of the Exchange.

NOTICEE'S REPRESENTATIONS AGAINST THE SEBI SOP CIRCULAR

- 16.2. The representation of the Noticee vide its email dated March 22, 2022, for the action initiated under the SEBI SOP Circular is as under:
- a. None of the triggers as per Clause 4 of the SEBI SOP Circular apply to the present matter.
 - b. The application and interpretation of the SEBI SOP Circular in the present case is premature and bad in law as the Noticee's case has special circumstances.
 - c. The GRC order is not a crystallized liability as the Noticee has five levels of remedy available against the GRC order, viz. arbitration (Exchange), arbitration appeal (Exchange), appeal under Section 34 of the Arbitration and Conciliation Act, 1996, appeal under Section 37 of the Arbitration and Conciliation Act, 1996, and appeal before the Hon'ble Supreme Court of India.
 - d. The Exchange failed to consider deposit of Rs. 2.26 crores with the NSE Clearing Limited ("**NCL**"), BSE Limited ("**BSE**"), Globe Capital Market Limited, and the banks.

- e. Further, the Exchange did not consider Rs. 2.16 crores pertaining to the GRC order dated July 20, 2021, passed against IL&FS. Additionally, the Noticee has filed its intention to initiate arbitration proceedings in the matter of Bluesea International and has filed Form 1, i.e., Arbitration Application.
- f. The 3 investor complaints involving a total claim of Rs. 46.67 lakhs, pertain to non-receipt of pay-outs. The Noticee has a clear cash-credit limit of Rs. 35.31 lakhs and funds lying with its Clearing Member, i.e., Globe Capital, which may be used to resolve the said complaints.
- g. Mr. Sunil Giri, Partner of Bluesea International, filed a complaint in the Vile Parle Police Station, and the Noticee received a notice from the police calling upon the Noticee and its Directors to be present before the said police station. This was a harassment tactic employed by Bluesea International to hinder the Noticee's efforts from pursuing the actual remedies in the matter before the Exchange. Hence, there was a delay in filing reply to the SCN-1.
- h. The following deposits of the Noticee are available with the Exchanges, Clearing Corporations, and banks:

| Sr. No. | Entity | Deposits Available (Rs.) |
|----------------|------------------------------|---------------------------------|
| 1. | BSE | 1,34,80,219/- |
| 2. | NSEIL | 54,00,000/- |
| 3. | Globe Capital Market Limited | 35,30,734/- |
| 4. | Bank Balances | 3,46,723/- |
| 5. | Claim against ISSL | 2,16,46,141/- |
| Total | | 4,44,03,817/- |

- i. The IL&FS Securities Services Limited ("**ISSL**") funds pertaining to the GRC order dated July 20, 2021, in favour of the Noticee may be ear marked and used towards the GRC claims against the Noticee. It is ready and willing to provide an undertaking in this regard. On account of disablement of terminals, the Noticee has lost its source of income, and the clients are also suffering. The Noticee filed arbitration against the Bluesea International on February 05, 2022. However, the Exchange rejected the application stating that the SEBI SOP Circular has been invoked. This stance of the Exchange is contrary to its earlier stand wherein the Exchange vide email dated January 21, 2022, asked the Noticee to forward the arbitration claim by providing Form I and other supporting documents.

- j. The Noticee requires time to infuse funds, and to settle claims, if required. Thus, the actions taken against it shall be delayed/prevented in the interest of justice. Due to the disablement of the trading terminals of the Noticee, the clearing member, Globe Capital is not releasing margin deposits of Rs. 35.30 lakhs without Exchange approval. Since the Exchange is not providing approval, the Noticee is unable to pay its credit clients, leading to complaints concerning non-payment from its constituents. This will lead to a declaration of default within 3 months from the trigger of the SEBI SOP Circular and result in the economic death of the Noticee. The Noticee is unable to deal with the payout requests and claims of its clients as its bank accounts are frozen. The Exchange has applied for premature closure of Noticee's fixed deposit with Bank of India kept in lien as security deposit with NCL amounting to Rs. 25 lakhs.
- k. Clause 7 of the SEBI SOP Circular states that once the Member is disabled or SCN is issued for declaration of the defaulter to Trading Member/Clearing Member (whichever is earlier), no further Investor Grievance Redressal Committee/Arbitration meetings shall be conducted.
- l. The purpose of Clause 7 of the SEBI SOP Circular is to protect the interest of non-defaulting clients of a Trading Member and/or non-defaulting clients/Trading Member(s) of a Clearing Member in the likely event of a default by the Trading Member/Clearing Member. The purpose is to ensure that the non-defaulting clients do not have to go through the entire process of GRC/arbitration, as the initiating Exchange adjudicates the claim after the trigger of the SEBI SOP Circular. Thus, in the event of the declaration of default of the Trading Member, the right of the non-defaulting clients to lodge claims is not extinguished.
- m. However, the same interpretation may not be attributed to instances where arbitration is initiated by a non-defaulting client who has succeeded before the GRC. The concerned Trading Member has the right to lodge an arbitration to set aside the said GRC order. If such an absurdity is allowed, Trading Members will have no recourse in law and/or equity. Thus, Clause 7 of the SEBI SOP Circular must be interpreted to restrict arbitration proceedings filed by clients / constituents only and not by a Trading Member.
- n. Clause 7 of the SEBI SOP Circular cannot override the byelaws of the Exchange as well as the client-trading member agreement, which mandates that a dispute between trading member and a constituent has to be resolved

under the arbitration mechanism. In the circumstance, unless it is unconstitutional, the SEBI SOP Circular cannot override a valid contract between parties.

- o. The legislators have used the term 'meetings' in Clause 7 of the SEBI SOP Circular, thereby implying no bar on the Exchange accepting a reference of arbitration. The embargo, if any, applies only to GRC/arbitral tribunal meetings and not to the filing of arbitration references. Further, the rule of ejusdem generis is applicable in the present case. The term 'arbitration meetings' in Clause 7 follows the term 'GRC meetings', which means that arbitration proceedings would be covered under Clause 7 only when an investor is unsuccessful at the GRC stage. Trading Members have no recourse before GRC.
- p. Thus, it is evident that only arbitration proceedings initiated by investors pursuant to GRC proceedings shall be kept in abeyance and not the arbitration proceedings initiated by the Trading Members to protect their interest.
- q. Denial of the Noticee's right to pursue arbitration against Bluesea International will have adverse consequences on the Noticee, including severe reputational damage in the securities market. The transactions executed by Bluesea International were commercial, and the Noticee had principal-agent privity with it. Therefore, a regulatory authority cannot interfere with the same.
- r. The Noticee has challenged the SEBI SOP Circular in a writ petition filed before the Hon'ble High Court of Bombay.

16.3. Committee meeting held on April 29, 2022

- a. The Exchange vide its email dated April 23, 2022, granted the Noticee another opportunity of personal hearing before the Committee in its meeting held on April 29, 2022.
- b. Mr. Anurag Shukla - Director Mr. J. J. Bhatt, Ms. Rinku Valanju, Mr. Rushin Kapadia and Mr. Pratham Masurekar - Authorized representatives appeared on behalf of the Noticee and made the following oral submissions:

- i. Mr. Dhirendra Shukla, promoter of the Noticee has undertaken to infuse Rs. 75 lakhs, availed as a loan, in the company for complying with the Committee's order dated February 28, 2022.
 - ii. The Noticee re-iterated its written submissions and representation against the SEBI SOP Circular.
 - iii. The investor complaints are miniscule in number and most complaints are not crystallized against the Noticee.
 - iv. The Directors of the Noticee are trying to bring in funds for payment towards the GRC orders and are selling/mortgaging personal properties.
 - v. There was a change in the management and the Noticee was unable to fetch the data and documents demanded by the forensic auditors appointed by the Exchange.
 - vi. Rs. 2 crores pertaining to ISSL which is lying with NCL, if received, will be sufficient to comply with the Committee's order dated February 28, 2022.
 - vii. The Noticee prayed as under:
 - An additional time of 45 days be granted for payment of its outstanding dues.
 - An additional time of 7 days be granted to provide the documents required by the forensic auditors appointed by the Exchange
 - The Exchange be directed to keep the operation of the SEBI SOP Circular in abeyance until the writ petition is disposed off by the Hon'ble High Court of Bombay.
 - The Noticee be permitted to file an arbitration proceeding against the GRC order passed in favour of Bluesea International.
- c. Considering the submissions of the Noticee, the Committee granted 7 days' time to the Noticee to provide data / clarification to the forensic auditors and advised the Noticee to inform the Exchange regarding time required to deposit approximately Rs. 3.24 crores to the Exchange towards GRC orders,

additional complaints, dues, and deposits with the Exchange. The details are as under:

| Sr. No. | Particular | Amount (Rs.) |
|----------------|--|-----------------------|
| 1 | GRC orders pending to be paid to clients | 1,60,18,467.67 |
| 2 | Additional complaints (The complaint amounts over and above the amount already included in creditors) | 50,52,351.91 |
| 3 | Deposit to be kept with Exchange | 1,12,00,000.00 |
| 4 | Exchange Dues apart from GRC orders (as on May 12, 2022) | 2,22,308.13 |
| | TOTAL | 3,24,93,127.71 |

- d. The Exchange vide its email dated May 13, 2022, advised the Noticee to submit its response. Further, the Exchange vide email dated June 07, 2022, reminded the Noticee to submit its response. However, no response was received from the Noticee.

FORENSIC AUDIT

17. As referred above, the Committee noted that an external auditor was appointed on February 28, 2022, to conduct a forensic audit of the books and records of the Noticee for the period from January 1, 2019, to February 28, 2022, from March 2022 to August 2022. Post-inspection, the Exchange issued a show-cause notice dated October 20, 2022 ("**SCN-2**") to the Noticee for the observed non-compliances.
18. The observations/alleged violations mentioned in the SCN-2 are summarized hereunder:
- a. Unauthorized trading in client accounts and non-maintenance of appropriate evidence in respect of orders placed by its clients
 - Unauthorized trading
 - Non-maintenance of pre-order confirmation
 - Withholding of post-order confirmation
 - b. Potential portfolio management scheme/potential guaranteed returns scheme run by the Noticee
 - Unexplained expenses with related entities/entities which appear to be potentially indirectly linked
 - c. Improper maintenance of client ledgers

- Mismatch in derived client ledger balances
 - Inappropriate journal entries in client ledgers
 - Client balances potentially written off by levying printing and stationary charges
- d. Shortfall of clients' funds as of February 28, 2022
- e. Non-settlement of clients' funds as of February 28, 2022
- f. Non-reconciliation of securities as of February 28, 2022
- g. Pledging of securities of credit balance clients
- h. Member has not unpledged/disposed off client securities pledged with banks / NBFCs by August 31, 2019
- i. Non-maintenance of client registration documents containing all the prescribed mandatory documents
- j. Shortfall in net worth wherein the net worth of the Noticee was (-ve) Rs. 87.18 lakhs as of September 30, 2021, which is below the minimum net worth of Rs. 1 crore prescribed by the Exchange
- k. Incorrect mobile numbers and email ids of the clients uploaded on the UCI database
- l. Engagement as a principal in a business other than securities involving personal financial liability
19. In response, the Noticee vide its email dated November 04, 2022, expressed its inability to submit its reply on time due to proceedings initiated by the Noticee against one of its ex-Director and employees. The Noticee sought certain information pertaining to forensic audit and requested extension of time till November 21, 2022, to file the response.
20. The Exchange provided all the necessary information vide its email dated November 04, 2022, to the Noticee and directed the Noticee to submit its reply by November 12, 2022.
21. The Noticee vide its email dated November 13, 2022, sought forensic audit report, its workings, supporting's, and exhibits referred in SCN-2. The Exchange provided the required documents vide its email on November 14, 2022, and directed the Noticee to

submit its reply by November 21, 2022. The Noticee vide its email dated December 14, 2022, replied to SCN-2.

STATUS ON COMPLIANCE WITH SEBI SOP CIRCULAR

22. The Committee noted the following updates on SEBI SOP Circular:

- a. The Exchange initiated forensic audit in compliance with Clause 4.14 of the SEBI SOP Circular and issued SCN-2. The relevant extract of the Clause 4.14 is as under:

“

a) ISE, in consultation with SEs / CCs, shall appoint a forensic auditor to conduct forensic audit of books of accounts of the concerned TM. All SEs shall obtain details of the free securities / collateral available with their respective CM and CC and provide to the forensic auditor.

b) An assessment of assets and liabilities of the TM shall be undertaken by the auditor. The liabilities to the clients for funds and securities shall be established with demarcation of securities belonging to the fully paid clients or partly paid / unpaid clients.”

- b. As per Clause 4.24 of the SEBI SOP Circular, the Stock Exchange shall initiate the process of settling clients' account within 30 days from the crystallization of the balances. The relevant extract of the Clause 4.24 is as under:

“With regard to the restoration of securities of clients lying with the CM, post crystallization of balances in the financial ledger of clients by forensic auditor or as per the Auditor's certificate as may be provided by Member:

- ISE/SE/CC shall endeavour to initiate the process to settle debit balance of such client accounts by selling their securities if such clients fail to clear their debit balance after giving notice period for 5 days*
- After reconciling the Register of Securities (ROS), the securities of the credit balance clients (fully paid clients) shall be restored to their respective demat accounts.*

In this regard, the related parties of the trading member shall not be considered for settlement, for which the TM shall provide an undertaking to the SEs / CC.”

- c. Accordingly, the Exchange initiated steps to settle the clients' accounts. However, the Noticee vide its email dated October 07, 2022, stated that there is discrepancy in the balances computed by the forensic auditor vis-à-vis the actual client balances.
- d. After multiple rounds of communication, the Noticee vide its email dated November 30, 2022, requested extension of time till December 12, 2022, to reconcile all the client's balances.
- e. Considering the submissions of the Noticee regarding discrepancies in the clients' balances as per the forensic auditors, settlement of the clients' accounts was put on hold.

PREVIOUS PROCEEDINGS BEFORE THE COMMITTEE

23. The matter was placed before the Committee as under:

23.1 Committee meeting held on December 21, 2022

- a. The Exchange vide its email dated December 15, 2022, granted the Noticee an opportunity of personal hearing before the Committee in its meeting held on December 21, 2022.
- b. Mr. Anurag Shukla - Director, Mr. J. J. Bhatt, Ms. Rinku Valanju, Mr. Rushin Kapadia and Ms. Akshita Sharma - Authorized representatives appeared on behalf of the Noticee and re-iterated its written submissions.
- c. Upon considering the submissions of the Noticee, the Committee directed the Noticee to comply with the following directions within 45 days from the date of intimation, failing which the matter will be placed before the Committee for appropriate decision:
 - i. To reconcile the client ledger balance crystalized by the Forensic Auditors with its books of accounts and submit evidence to the satisfaction of the Exchange
 - ii. To deposit an amount of Rs. 1 crore towards GRC orders. The said direction is in addition to membership deposits required to be maintained with the Exchange and towards prescribed net worth as per membership requirements.

- d. The Exchange, vide its email dated January 25, 2023, informed the abovementioned directions to the Noticee.
- e. The Exchange vide several emails dated February 08, 2023, February 09, 2023, February 13, 2023, and March 23, 2023, sought additional information from the Noticee with regards to reconciliation of clients' balances. However, the Noticee failed to provide any response.
- f. However, the Noticee vide email dated March 29, 2023, claimed that it is in the process of reconciling the clients' balances. The Noticee stated that it is unable to provide the complete details due to shifting of its office but would assist the Exchange in verifying the clients' balances.

23.2 **Developments post the meeting held on December 21, 2022**

- a. The Noticee vide its email dated March 11, 2023, submitted its point-wise response to above mentioned directions as under:
 - Direction to reconcile the client ledger balance:
The Noticee sent emails to clients asking them to provide confirmation to the ledger balance and to reply on email with objection, if any, within 7 days of its email failing which the Noticee will consider that the mentioned ledger balance is correct, and client has no objection.
 - Direction to deposit Rs. 1 crore towards GRC orders:
Noticee has requested to consider the Base Minimum Capital ("**BMC**") of Rs. 25 lakhs and the Initial Membership Deposit ("**IMD**") of Rs. 70 lakhs with BSE / Indian Clearing Corporation Limited ("**ICCL**") towards GRC orders and continue with disablement.
- b. The Exchange vide email dated March 15, 2023, informed the Noticee as under:
 - BMC cannot be utilised for making payment to clients.
 - BSE has confirmed that out of Rs. 70 lakhs of IMD, only Rs. 10 lakhs are available with BSE, out of which some amount is already utilised against the pending dues by BSE.

- Deposits of Rs. 60 lakhs available with the Exchange have already been utilised towards GRC order.
 - In view of the above, the Exchange requested the Noticee to arrange for funds as per the directions of the Committee dated January 25, 2023, on an immediate basis.
- c. The Exchange vide its email dated February 08, 2023, February 13, 2023, and March 23, 2023, issued reminders to the Noticee to comply with the Committee's direction.
- d. The Exchange vide its email dated May 02, 2023, informed the Noticee that BSE has transferred an amount of Rs. 3.22 lakhs. Further, requested the Noticee to arrange for the balance funds in terms of Committee directions dated January 25, 2023, on urgent and immediate basis.

23.3 **Committee meeting held on May 8, 2023**

- a. The matter was placed before the Committee in its meeting held on May 8, 2023. The Committee noted that the Exchange is analysing the instances of discrepancy in client balance as per the Noticee and as per the forensic auditor. Further, the Exchange sought clarification from the Noticee for the remaining instances wherein reasons for mismatches were not provided by the Noticee.
- b. The Committee also noted that the Exchange has released funds to the clients wherein there is no mismatch observed by the Noticee in its books of accounts vis-à-vis the balances crystalized by the Forensic Auditors. The funds were released by the Exchange as the funds were sufficient to make payment to all the credit balance clients reported by the Forensic Auditors.
- c. The Committee noted that there were 20 clients whose bank details were not available. Hence, the Exchange was unable to release payment to these clients. Further, the Exchange directed the Noticee to obtain the correct bank details from the clients and provide the same to the Exchange.
- d. The Committee, after considering the above, advised the Exchange to settle the clients' accounts basis the following:

- In instances wherein the client confirmation is available, the settlement of clients' accounts to be done based on the balance as per client confirmation or balance as per forensic report, whichever is lower.
 - In instances wherein the client confirmation is not available, the settlement of clients' account to be done based on the balance as per forensic report.
- e. Accordingly, Exchange vide its email dated June 8, 2023, informed the Noticee to provide confirmation from the clients that are pending for settlement on an immediate basis.

23.4 **Committee meeting held on July 10, 2023**

- a. The matter was placed before the Committee in its meeting held on July 10, 2023. The Committee noted that the Noticee provided 177 instances for CDS segment and 30 instances for F&O segment wherein there was a difference in the clients' trade data considered for arriving at the balances of clients.
- b. Considering the above, the Committee noted that the Exchange has decided to hold the payment of funds and securities to clients till all the balances are crystallised so that no excess payment is made to the clients. The Committee further noted that, once the balances are crystallised, the Exchange would send written communication to the clients for checking whether excess payment has been made to them.
- c. The Exchange, vide its email dated July 26, 2023, sent the revised crystallized balances to the Noticee for confirmation. However, the Noticee failed to provide a satisfactory response along with documentary evidence despite multiple reminders. The Exchange received 2 emails from investors claiming credit balance in their accounts along with statement of accounts. However, the Noticee reported debit balance or zero balance for the said clients. Further, as per the forensic auditor the clients have a credit balance different from the balance claimed by the clients.

23.5 Committee meeting held on August 17, 2023

- a. The matter was placed before the Committee in its meeting held on August 17, 2023. The Committee noted that there was mismatch in the clients balances and the Noticee failed to confirm the revised clients' balances.
- b. Considering the above, the Committee decided to grant the Noticee additional 30 days' time to submit balance confirmation to the Exchange duly reconciled with respective clients, failing which payment shall be released to clients as per the revised balances submitted by the forensic auditor or balance confirmation given by the clients if any, whichever is less.
- c. The Exchange, vide its email dated August 24, 2023, communicated the said direction of the Committee to the Noticee.

23.6 Developments post meeting held on August 17, 2023

- a. The Exchange sent multiple reminders to Noticee dated September 05, 2023, September 06, 2023, September 11, 2023, September 12, 2023, and September 20, 2023, seeking response on the Committee's direction and made several telephonic calls, however, the Noticee failed to respond.
- b. Since the Noticee failed to respond, the Exchange released funds to clients as per Committee directions viz., payment shall be released to clients as per the revised balances submitted by the forensic auditor or balance confirmation given by the clients if any, whichever is less.

23.7 Committee meeting held on February 06, 2024

- a. The matter was placed before the Committee in its meeting held on February 06, 2024. The Committee noted that as of February 6, 2024, the status of settlement of clients' funds and securities was as under:

| Sr. No. | Particulars for Funds payable | No. of clients | Amount (in lakhs) |
|----------------|---|-----------------------|--------------------------|
| 1 | Total clients paid as per forensic auditor or balance confirmation from clients | 863 | 225.90 |
| 2 | Client directly paid by the Noticee | 1 | 0.08 |
| 3 | Funds kept on hold | 68 | 9.34 |
| 3a | Clients are required to give securities to the Noticee and will be settled post it is established that no securities are receivable from these clients or the | 59 | 8.19 |

| Sr. No. | Particulars for Funds payable | No. of clients | Amount (in lakhs) |
|---------|---|----------------|-------------------|
| | securities so receivable are returned by them to the Noticee/Exchange. | | |
| 3b | In case of client Bluesea International, the funds payable as per the forensic audit report are Rs. 1,08,170.86. However, an amount of Rs. 57,50,466.33 has already been released to Bluesea International out of the total admissible claim of Rs. 1,54,24,446/- as per GRC order. | 1 | 1.08 |
| 3c | Payment kept on hold due to incomplete bank details | 8 | 0.07 |
| 4 | Payments initiated but rejected by the bank | 76 | 4.37 |

| Sr. No. | Particulars for Securities payable | No. of clients |
|---------|--|----------------|
| 1 | Total clients to whom securities are payable as per forensic auditor | 27 |
| 2 | Clients whose securities were not payable (Upon analysis, it was observed that there was an error in the working done by forensic auditors and securities were actually not payable) | 3 |
| 3 | Clients whose securities are kept on hold as it pertains to related party | 1 |
| 4 | Clients whose securities are kept on hold as they are debit balance clients | 12 |
| 5 | Clients whose securities are kept on hold as there are securities to be received from client as well | 4 |
| 6 | Clients whose securities are payable and can be released | 7 |
| 6a | Clients for whom transfer of securities initiated as confirmation of demat account received from client | 2 |
| 6b | Clients for whom transfer of securities kept on hold as confirmation of demat account pending even after multiple reminders to clients | 3 |
| 6c | Clients for whom transfer of securities kept on hold as clients are not contactable through mobile number or email | 2 |
| | TOTAL | 54 |

- b. The Committee noted that since all the clients have either been paid or funds are available with the Exchange as per the balances crystallized in the forensic audit report except towards GRC order, there is no shortfall of funds as of February 06, 2024.
- c. Upon considering the above, the Committee advised the Exchange to withdraw the invocation of SEBI SOP Circular and allow the Noticee to file arbitration against the GRC orders subject to the deposit of funds by the Noticee with the Exchange to the extent of the shortfall for the purpose of blocking the same against the GRC orders, excluding the membership deposits and/or other dues.

23.8 Developments post the meeting held on February 06, 2024

- a. The Exchange vide its email dated March 26, 2024, informed the Noticee to deposit Rs. 71.96 lakhs with the Exchange towards GRC orders, pursuant to which, the Exchange shall cease to take further action under the SEBI SOP Circular dated July 1, 2020, and allow the Noticee to file arbitration against the GRC orders.
- b. The Noticee failed to reply to the Exchange email. The Exchange sent a reminder on April 25, 2024.

23.9 Committee meeting held on May 23, 2024

- a. The Exchange, vide its email dated April 29, 2024, granted the Noticee an opportunity of personal hearing before the Committee in its meeting held on May 23, 2024.
- b. The Exchange in its communication to the Noticee, re-iterated Committee's previous directions communicated on January 25, 2023, June 08, 2023, and August 24, 2023, and March 26, 2024.
- c. The Exchange observed that the Noticee failed to respond to the Exchange email dated March 26, 2024, and reminder email dated April 25, 2024, wherein the Noticee was requested to comply with the Committee's direction dated February 06, 2024, and deposit an amount of Rs. 71.96 lakhs excluding membership deposit and pending dues, if any.
- d. Considering the Noticee failed to respond, the Exchange vide its email and letter dated April 29, 2024, gave another opportunity of personal hearing before the Committee in its meeting May 23, 2024. The Exchange has also tried to hand deliver the letter dated April 29, 2024, at last known addresses of the Noticee. However, the Noticee was not found at both addresses and the office was found to be occupied by other persons.
- e. Since the Noticee was not present at the registered and correspondence office and failed to reply to the Exchange emails, the Exchange issued the personal hearing notice via paper publication in the national and local newspapers on May 11, 2024.

- f. Subsequently, the Noticee vide its email dated May 22, 2024, sought adjournment on the ground that their representative is travelling out of station on account of death in their family.
- g. The matter was placed before the Committee on May 23, 2024, wherein the Committee acceded to the adjournment request and decided to grant another opportunity to the Noticee.

23.10 Committee meeting held on June 20, 2024

- a. The Exchange, vide its email dated June 12, 2024, granted the Noticee an opportunity of personal hearing before the Committee in its meeting held on June 20, 2024. The Exchange issued the personal hearing notice via paper publication in the national and local newspapers on June 13, 2024.
- b. The Noticee vide its email dated June 18, 2024, sought adjournment on the ground that the next hearing of the writ petition filed by Noticee before Bombay High Court Challenging the SEBI SOP Circular, was scheduled on July 3, 2024, and requested the Committee to consider the matter post hearing of the writ petition.
- c. The matter was placed before the Committee on June 20, 2024, wherein the Committee acceded to the adjournment request and decided to grant another opportunity to the Noticee.

23.11 Committee meeting held on July 9, 2024

- a. The Exchange, vide its email dated June 26, 2024, granted the Noticee an opportunity of personal hearing before the Committee in its meeting held on July 9, 2024.
- b. The Noticee vide its email dated July 8, 2024, requested for online hearing before the Committee and refused to come in-person. The Exchange vide its email dated July 9, 2024, informed that the Noticee is required to be present in person before the Committee either from the Exchange head office or any of the regional offices of the Exchange. However, the Noticee refused to be present in person vide its email dated July 9, 2024. The Noticee re-iterated that an amount of Rs. 70 lakhs are lying with ICCL. Further, the Noticee stated that the credit balances to be paid to the clients

is Rs. 1.80 crores whereas according to the Exchange it is Rs. 2.28 crores and requested a breakup of the said amounts.

- c. The matter was placed before the Committee on July 9, 2024, wherein the Committee decided to grant another opportunity of hearing to the Noticee.

PRESENT PROCEEDINGS BEFORE THE COMMITTEE

23.12 Committee meeting held on July 29, 2024

- a. The Exchange, vide its email dated July 22, 2024, granted the Noticee another opportunity of personal hearing before the Committee in its meeting held on July 29, 2024.
- b. The Noticee failed to reply to the said email.
- c. The Committee noted that several opportunities of personal hearing were granted to the Noticee. Despite the same, the Noticee failed to reply and failed to appear before the Committee. Considering the above, the Committee decided to proceed with the matter based on the material available on record.

STATUS OF WRIT PETITION BEFORE HON'BLE HIGH COURT OF BOMBAY

24. The Committee observed that the Noticee filed a writ petition before the Hon'ble High Court of Bombay challenging the SEBI SOP Circular.
25. The matter was listed on July 3, 2024, before the Division Bench comprising of their Lordships, the Hon'ble Mr. Justice K. R. Shriram and the Hon'ble Mr. Justice Jitendra Jain. Since the Noticee claimed that it had Rs. 71 Lakhs deposits with ICCL, the Hon'ble Court called upon ICCL to be present during the next hearing.

REGULATORY PROVISIONS

26. 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:

SCN-1

26.1. Misuse of clients' funds

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

The funds available in the client bank accounts of the stockbroker together with balances available with its clearing member and with the clearing corporation should not be less than the funds payable to the client at all times."

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

Principle

The total available funds, i.e., cash and cash equivalents with the stockbroker and the Clearing Corporation/Clearing Member should always be equal to or greater than client's funds as per ledger balance.

- c. Regulation 4.5.3 (e) of the NSEIL Regulations (F&O and CM Segments)

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

26.2. Shortfall in net worth

Rule 33 under Chapter III of the NSEIL Rules

The relevant authority shall from time to time prescribe conditions and requirements for continued admittance to trading membership which may, inter alia, include maintenance of minimum net worth and capital adequacy, renewal of certification, if any, etc. The trading membership of any person who fails to meet these requirements shall be liable to be terminated.

26.3. Non-settlement of clients' funds and securities

- 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 payout. 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 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.

26.4. **Non reconciliation of securities**

- a. Exchange Circular No. NSE/INSP/10605 dated April 21, 2008

The records should be periodically reconciled with the actual collateral deposited with the broker.

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

The Members are advised to reconcile the client beneficiary account/s and the register of securities on a quarterly basis and maintain a complete audit trail & documentation of such reconciliation.

26.5. **Improper maintenance of books of accounts. viz. client ledgers**

Regulations 6.1.1 and 6.1.2 of NSEIL Regulations (CM and F&O Segments)

6.1.1. Every Trading Member shall comply with all relevant statutory Acts, including Securities Contracts (Regulation) Act, 1956 and Rules thereunder of 1957, and Securities Exchange Board of India Act, 1992 and Rules, Regulations and guidelines thereunder, and the requirements of and under any notifications, directives, and guidelines issued by the Central Government and any statutory body or local authority or anybody or authority acting under the authority or direction of the Central Government relating to maintenance of accounts and records.

6.1.2. In addition to the requirements as per Regulation 6.1.1 above, every Trading Member of the Exchange shall comply with the following requirements and such other requirements as the Exchange may from

time to time notify in this behalf relating to books of accounts, records, and documents in respect of his membership and trading on the CM/F&O segment of the Exchange.

26.6. **Non maintenance of appropriate evidence regarding orders placed by the clients**

- a. Regulations 3.2.1 of NSEIL Regulations (CM segment) and 3.4.1 of NSEIL Regulations (F&O segment)

Trading Members shall ensure that appropriate confirmed order instructions are obtained from the constituents before placement of an order on the NEAT system and shall keep relevant records or documents of the same and of the completion or otherwise of these orders thereof.

Notwithstanding the above, wherever the order instructions are received from clients through the telephone, Members shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records.

- b. Exchange Circular No. NSE/INSP/37301 dated March 26, 2018

To further strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of:

- a. Physical record written & signed by client,*
- b. Telephone recording,*
- c. Email from authorized email id,*
- d. Log for internet transactions,*
- e. Record of messages through mobile phones,*
- f. Any other legally verifiable record.*

When a dispute arises, the broker shall produce the above-mentioned records for the disputed trades. However, for exceptional cases such as technical failure etc. where broker fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by

client, receipt/payment of funds/ securities by client in respect of disputed trade, etc. shall also be considered.

26.7. **Non-maintenance of client registration documents containing all the prescribed mandatory documents**

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

Client Registration Procedure

1. *The stockbroker shall register a client by entering into an agreement with him. For this purpose, the stockbroker shall make available a folder / book containing all the documents required for registration of a client. The folder/book shall have an index page listing all the documents contained in it and indicating briefly significance of each document. Once signed, a copy of the same shall be made available to the client.*

b. Exchange Circular No. NSE/INSP/18677 dated August 22, 2011

SEBI has devised the uniform documentation to be followed by all the stockbrokers / trading members; a copy thereof to be provided by them to the clients. The details of such documents are listed below:

- i. Index of documents giving details of various documents for client account opening process*
- ii. Client Account Opening Form in two parts:*
 - a. Know Your Client (KYC) form capturing the basic information about the client and instruction/check list to fill up the form.*
 - b. Document capturing additional information about the client related to trading account.*
- iii. Document stating the Rights & Obligations of stockbroker, sub-broker and client for trading on exchanges (including additional rights & obligations in case of internet / wireless technology-based trading).*
- iv. Uniform Risk Disclosure Documents (for all segments / exchanges).*
- v. Guidance Note detailing Do's and Don'ts for trading on exchanges.*

SCN-2

26.8. Unauthorized trading in client accounts and non-maintenance of appropriate evidence in respect of orders placed by its clients

- a. Regulation 3.2.1 of NSEIL Regulations (CM Segment) and Regulation 3.4.1 of NSEIL Regulations (F&O Segment)

Trading Members shall ensure that appropriate confirmed order instructions are obtained from the constituents before placement of an order on the system and shall keep relevant records or documents of the same and of the completion or otherwise of these orders thereof.

Notwithstanding the above, wherever the order instructions are received from clients through the telephone, Members shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records.

- b. Exchange Circular No. NSE/INSP/37301 dated March 26, 2018

To further strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of:

- a. Physical record written & signed by client,*
- b. Telephone recording,*
- c. Email from authorized email id,*
- d. Log for internet transactions,*
- e. Record of messages through mobile phones,*
- f. Any other legally verifiable record.*

When a dispute arises, the broker shall produce the above-mentioned records for the disputed trades. However, for exceptional cases such as technical failure etc. where broker fails to produce order placing evidence, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like post trade confirmation by client, receipt/payment of funds/securities by client in respect of disputed trade, etc. shall also be considered.

26.9. **Potential portfolio management scheme/potential guaranteed returns scheme run by the Noticee**

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 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.*

26.10. **Improper maintenance of client ledgers**

Exchange Circular No. NSE/INSP/38743 dated August 30, 2018

In order to standardize the maintenance of books of accounts / records and ensure uniformity across all Members, a standard format for Register of Securities, Holding Statement, Bank Book and Client Ledger is prescribed in the circular.

Non-maintenance of Register of Securities, Holding Statement, Bank Book and Client Ledger in the prescribed format is a violation of the provisions of the Securities Contracts (Regulation) Rules 1957 / Regulations of the Exchange and will attract appropriate disciplinary action as per Rule 1 and 2 of Chapter IV of NSEIL Rules.

26.11. **Shortfall 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

3.3.1. *Funds of credit balance clients used for margin obligations of debit balance clients or own purpose:*

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)

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

26.12. **Non-settlement of clients' funds**

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 payout. 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 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.*

26.13. **Non-reconciliation of securities**

a. Exchange Circular No. NSE/INSP/10605 dated April 21, 2008

The records should be periodically reconciled with the actual collateral deposited with the broker.

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

The Members are advised to reconcile client beneficiary account/s and the register of securities on a quarterly basis and maintain complete audit trail & documentation of such reconciliation.

26.14. **Pledging of securities of credit balance clients**

Exchange Circular No. NSE/INSP/41359 dated June 20, 2019

- 4.7 *With effect from September 01, 2019, clients' securities lying with the TM/CM in "client collateral account", "client margin trading securities account" and "client unpaid securities account" cannot be pledged to the Banks/NBFCs for raising funds, even with authorization by client as the same would amount to fund based activity by TM/CM which is in contravention of Rule 8(1)(f) & 8(3)(f) of Securities Contracts (Regulation) Rules, 1957.*

26.15. **Member has not unpledged/disposed off client securities pledged with banks/NBFCs by August 31, 2019**

Exchange Circular No. NSE/INSP/41359 dated June 20, 2019

Further, the client's securities already pledged in terms of clause 2.5 of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and clause 2 (c) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 shall, by August 31, 2019, either be unpledged and returned to the clients upon fulfilment of pay-in obligation or disposed off after giving notice of 5 days to the client.

26.16. **Non-maintenance of client registration documents containing all the prescribed mandatory documents**

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

Client Registration Procedure

1. *The stock broker shall register a client by entering into an agreement with him. For this purpose, the stock broker shall make available a folder /book containing all the documents required for registration of a*

client. The folder/book shall have an index page listing all the documents contained in it and indicating briefly significance of each document. Once signed, a copy of the same shall be made available to the client.

2. The folder/book shall have two parts: (a) Mandatory and (b) Non-mandatory.

Mandatory Documents

3. The mandatory documents are:
 - a. Member Client Agreement (MCA)/Tripartite Agreement in case subbroker is associated,
 - b. Know Your Client (KYC) Form
 - c. Risk Disclosure Document (RDD)

These shall be executed in the format as prescribed by SEBI.

26.17. Shortfall in net worth

Rule 33 of Chapter III of the Rules of the Exchange

Continued Admittance

The relevant authority shall from time to time prescribe conditions and requirements for continued admittance to trading membership which may, inter alia, include maintenance of minimum net worth and capital adequacy, renewal of certification, if any, etc. The trading membership of any person who fails to meet these requirements shall be liable to be terminated.

26.18. Incorrect mobile numbers and email ids of the clients uploaded on the UCI database

Exchange Circular No. NSE/INSP/32471 dated May 31, 2016

Separate mobile number/E-mail address shall be uploaded for each client. The stockbroker may, at the specific written request from the client, upload the same mobile number/E-mail address of one of the client's family members. 'Family' for this purpose would mean self, spouse, dependent children, and dependent

parents. In cases where investors do not have a mobile number/email id, the member shall obtain a declaration from the client to this effect and report the same in UCI online by entering 'notprovided@notprovided.com' in the email field and '6666666666' in the mobile number field.

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

a. 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 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. SEBI Circular No. SMD/POLICY/CIR-6/97 dated May 7, 1997

It has been opined that borrowing and lending of funds, by a trading member, in connection with or incidental to or consequential upon the securities business, would not be disqualified under Rule 8(1)(f) and 8(3)(f).

CONSIDERATION AND FINDINGS

27. The observations/alleged violations, reply of the Noticee and the findings of the Committee for SCN-1 and SCN-2 are as under:

27.1. **Misuse of clients' funds**

27.1.1. The Exchange verified the data submitted by the Noticee under the Enhanced Supervision of Stockbrokers as of December 17, 2021, vis-a-vis the trial balance, client ledgers, bank statements, and records of the Exchange/Clearing Corporation. Upon verification, the Exchange observed that the Noticee used the funds of credit balance clients for meeting the settlement obligations of debit balance clients or own purpose to the extent of Rs. 1.49 crores as of December 17, 2021,

thereby violating Principle 1 of the Enhanced Supervision of Stockbrokers.

27.1.2. In reply to SCN-1, the Noticee submitted as under: -

- a. The Noticee in order to avail clearing services entered into an agreement with ISSL on April 15, 2013. Further, due to the suspension of clearing services of ISSL due to the actions taken on it by the Ministry of Corporate Affairs and SEBI an amount of Rs. 2.15 crores, closing balance as on August 05, 2019, was lying with ISSL.
- b. The Noticee received an order dated July 20, 2021, from the GRC of Clearing Corporation which passed the claim of Rs. 2.16 crores of the Noticee against ISSL. Thereby, the Noticee is liable to recover Rs. 2.16 crores from ISSL and credit of the same ought to be considered by the Exchange while determining the total dues of the Noticee. Noticee has provided a copy of the ISSL GRC order dated July 20, 2021.
- c. There is no provision in the SEBI's Enhanced supervision circular dated September 26, 2020, for subtracting the GRC claim against the Noticee from the credits of the clients available with the Noticee, for the purpose of determining any alleged misuse of the client's funds. If the GRC claims against the Noticee were considered for the purpose of calculating the difference between the debits and credits of the Noticee's clients' funds, then the benefit of the claim of Rs. 2.16 crores received by the Noticee against ISSL must be given to the Noticee.
- d. Exchange email dated February 03, 2022, informed the Noticee about trigger of SEBI SOP on account of non-replenishment of funds due to GRC orders of Rs. 1.60 crores. The Noticee submits that Exchange has wrongly charged the Noticee for misutilization of funds w.r.t. claim of Rs. 2.17 crores as claim against GRC orders the same is evident from the trigger of SEBI SOP qua the non-deposit of funds towards the GRC claims with Exchange. Hence, Exchange inferring that the Noticee has mis utilized these funds is absurd.

- e. With respect to the amount of Rs. 1.54 crores awarded as GRC claim to Bluesea International, the Noticee tried to settle the matter out of court, and it was an exercise in futility and the Noticee has now availed its right of filing arbitration within a period of 3 years. Accordingly, the Noticee has filed Arbitration Form 1 with the arbitration fees on February 05, 2022.
- f. Hence, the Noticee cannot be said to have violated Regulation 4.5.3 (e) of NSEIL Regulations (CM and F&O Segments), Exchange circular no. NSE/INSP/10605 dated 21st April 2008, Exchange circular no. NSE/INSP/29096 dated 11th March 2015 and Exchange circular no. NSE/INSP/33276 dated 27th September 2016.
- g. The Noticee states pursuant to the GRC complaint the Noticee conducted an internal investigation and pursuant to the same a police complaint was filed against Mr. Sunil Jain alleging fraud and requesting criminal proceedings to be initiated against Mr. Jain under the relevant sections of Indian penal Code and the Information Technology Act. The Senior Police Inspector, Vile Parle Police station is currently seized of the matter. Pertinently, it appears that Mr. Jain was engaged in one Mr. Jairaj Bafna was in cohorts with Mrs. Jain and the complaint also include allegations against Mr. Bafna.

27.1.3. The Committee finds as under: -

- a. The Noticee is required to meet the GRC claims passed in favour of the clients. The said claims are therefore 'client payables' and hence required to be deducted while computing the availability of client funds. Hence, the Noticee's contention that there is no provision in Enhanced Supervision to reduce GRC claims for computing misuse of client funds is not tenable.
- b. Further the claim amount of Rs. 2.16 crores receivable from ISSL on account of GRC order passed in favour of the Noticee is not tenable as ISSL has expressed its intention of filing an arbitration against the said GRC order. However, the said amount cannot be considered as receivable by the Noticee as on the date of violation as the same is under dispute and under freeze.

- c. The Noticee has acted in violation of the Exchange circular no. NSE/INSP/29096 dated March 11, 2015, and Regulation 4.5.3 (e) of the NSEIL F&O and CM Regulations.

27.2. Shortfall in net worth

27.2.1. The Exchange verified the net worth certificates submitted by the Noticee, certifying the net worth of Rs. 1,05 crores and Rs. 1.09 crores vis-à-vis the trial balance and balance sheet as of March 31, 2021, and September 30, 2021, respectively. Upon verification, the Exchange observed that Noticee failed to deduct the non-allowable assets, viz. doubtful debts and advances, while computing the net worth. After considering the doubtful debts and advances, the net worth of the Noticee stood revised at (-ve) Rs. 1.67 crores and (-ve) Rs. 1.48 crores as of March 31, 2021, and September 30, 2021, respectively, which are below the minimum net worth prescribed for the Trading Members by the Exchange.

27.2.2. In reply to SCN-1, the Noticee submitted as under: -

- a. The Noticee denies having any shortfall in the net worth as on March 31, 2021, and September 30, 2021, respectively.
- b. The Noticee states that in July 2020 the trading and clearing services of ISSL were disabled at the time when an amount of Rs. 2.16 crores were recoverable by the Noticee from ISSL. Exchange immediately after 3 months i.e., in the quarter of October 2019 categorized the amount of Rs. 2.16 crores towards doubtful debts and onwards. The Noticee states that the amount of Rs. 2.48 crores are classified as 'Other Receivable' in the balance sheet in the financial year 2020-21 and that the same is wrongly considered by Exchange as a doubtful debt and the same can be inferred from the following:
- Exchange has neither expelled not declared ISSL as defaulter
 - NCL has enough deposits to meet the obligations of ISSL.
 - NCL's circular dated November 19, 2020, pursuant to which the GRC order has been passed against ISSL allowing the claim of Rs. 2.16 crores of the Noticee against the said ISSL.

- Circulars dated March 08, 2021, and July 10, 2021, regarding clarification on Dr. L. C. Gupta Networth computation. Accordingly, to the said circulars at table (B) Non-allowable Assets at Sr. no. 6 Doubtful Debts and Advances includes:
 - “Debts or advances overdue for more than three months.
 - Wherever, a provision is created for Doubtful/Bad debts, net amount i.e after reducing provision made for Doubtful/Bad Debts shall be considered
 - Any amount given in the nature of loans, advances, inter corporate deposits given to associates including subsidiaries/group companies of the member.
 - Loans given to Directors/Partners or any related party of the Member or its Directors or its partners or to the entities in which such director/partners or their relatives have control, irrespective of time period, shall also be deducted.
 - ‘Associate’ shall have the meaning as per the SEBI (Intermediaries) Regulations, 2008”
- c. As per Exchange email dated February 24, 2021, the Exchange while communicating the Net-worth as per the Exchange verification had not considered the amount of Rs. 2.16 crores as doubtful debt.
- d. From the above it is evident that the amount receivable from clearing corporation can never be considered as doubtful debt. Hence, there is no shortfall in networth as on March 2021 and September 2021.

27.2.3. The Committee finds as under:

- a. Although the GRC has passed an order in favor of the Noticee, ISSL has expressed its intention of filing an arbitration against the said GRC order and hence, the said amount is not currently receivable by the Noticee. The same is subject to the arbitration and hence its receipt is doubtful. Hence the said amount is deducted from “Doubtful Debts and Advance” while computing the networth of the Noticee.
- b. The contention of the Noticee that Exchange has neither expelled nor declared ISSL as defaulter, is not tenable as in order to deduct

the amount under “Doubtful Debts and Advance”, the said debts or advances should be overdue for more than three months; there is no requirement that the entity from whom the amount is due should be expelled / declared defaulter.

- c. Further, the contention that NCL has enough deposits to meet the obligations of ISSL is not tenable as ISSL has expressed its intention of filing an arbitration against the said IGRC order and hence, the said amount is not currently receivable by the Noticee.
- d. The Noticee has hence acted in violation of Rule 33 under Chapter III of the NSEIL Rules.

27.3. Non-settlement of clients' funds and securities

27.3.1. The Exchange verified the settlement declaration, register of securities, clients' ledgers, trial balance, and Exchange's records as of October 8, 2021. Upon verification, the Exchange observed that the Noticee failed to settle the clients' funds and securities as under:

- a. Active Clients - 2 instances of 1 client involving Rs. 42.67 lakhs out of 48 instances of 8 clients selected for sample scrutiny.
- b. Inactive clients - 157 out of 5,647 clients involving Rs. 5.29 lakhs.

27.3.2. In reply to SCN-1, the Noticee submitted as under: -

Active Clients:

The non-settlement was due to the financial instability brought on the Noticee because the Noticee's deposits worth about Rs. 2 crores were frozen with ISSL pursuant to NCLT's action against ISSL. Therefore, the Noticee was in shortage of funds. However, the said accounts have been settled in June 2021.

Inactive Clients:

- a. Dakshita Savla, Kinjal Doshi HUF, Hemal Mahendra Doshi HUF, Urja Kinjal Doshi, Mahendra Doshi HUF the account has been settled and closed

- b. Viral Shah's demat account is permanently inactive. Hence, when the Noticee transferred the shares of Goldbees which are only worth Rs. 178, the same bounced back
- c. Satinder Sehra the shares are partly paid stocks and the same cannot be settled until fully paid.
- d. Mala Bachhawat, Shailesh Mehta and Dhananjay Khot HUF the shares related to YES Bank shares, ISIN of which is in lock-in period till the year 2023 and the said stock is lying with our clearing member Globe Capital
- e. Transparent Commodities Private Limited the shares of Alka India Limited are suspended
- f. In few cases the amount up to Rs. 900 retained towards annual maintenance charges
- g. Majority of clients have settlement obligation which is less than Rs. 10,000
- h. Further the accounts of about 87 entities have been settled post October 08, 2021

27.3.3. The Committee finds as under:

Active Clients:

- a. The Noticee has accepted the inspection observation and attributed the same to financial instability brought on the Noticee due to the Noticee's deposits worth about Rs. 2 crores frozen with ISSL.
- b. The Noticee's contention that the clients were settled in June 2021, is not acceptable as post inspection compliance does not absolve the Noticee for the violation already committed. Thus, the violation persists.

Inactive Clients:

- a. The Noticee contended that 5 clients have been settled and closed. Upon verification it is observed that in the case of 5 clients, the demat account of client was inactive, shares were under lock in / under suspension and shares were partly paid. Thus, no violation persists in the case of 5 clients.

- b. Noticee has accepted that the remaining inactive clients were not settled in the relevant quarters on account of retention of funds less than Rs. 10,000/- or Rs. 900 towards annual maintenance charges which is not acceptable as per Exchange circular No. NSE/INSP/48624 dated June 16, 2021. As per the said circular, if the clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction, the credit balance shall be returned to the client by TM, within next three working days.
- c. As per Exchange circular No. NSE/INSP/48624 dated June 16, 2021, stipulates that the clients having credit balance, who have not done any transaction in the 30 calendar days since the last transaction, the credit balance shall be returned to the client by TM, within next three working days irrespective of the date when the running account was previously settled. Further retention of any amount towards administrative / operational difficulties in settling the accounts of regular trading clients (active clients), is discontinued.
- d. Hence, the claim of the Noticee for retention of funds towards annual maintenance charges is not acceptable. After considering the reply, the violation persists for 152 instances.
- e. In view of the above, the Noticee has acted in violation of Exchange circular no. NSE/INSP/13606 dated December 3, 2009.

27.4. Non reconciliation of securities

27.4.1. The Exchange verified the securities recorded in the register of securities vis-a-vis the securities available in the beneficiary accounts maintained by the Noticee as of November 6, 2021. Upon verification, the Exchange observed that the Noticee had not reconciled the securities in 35 scrips involving Rs. 26.22 lakhs as under:

| Sr. No. | Particulars | Scrip | Quantity | Amount (In Rs.) |
|----------------|--|--------------|-----------------|------------------------|
| 1 | Securities recorded in the register of securities but not available in the beneficiary | 34 | 40,916.000 | 26,22,112 |

| Sr. No. | Particulars | Scrip | Quantity | Amount (In Rs.) |
|---------|---|-------|------------|-----------------|
| | accounts maintained by the Noticee | | | |
| 2 | Securities available in the beneficiary accounts maintained by the Noticee but not recorded in the register of securities | 1 | 0.002 | 2 |
| | | 35 | 40,916.002 | 26,22,114 |

27.4.2. In reply to SCN-1, the Noticee submitted as under: -

- a. The sell transactions had taken place on November 02, 2021, and November 03, 2021, and as per standard practices followed by the brokerage houses for early pay in of securities, respective securities were transferred from the respective client(s) demat account to the Noticee's early pay in account number 1100001000023517 and the said securities are ear-marked till the date of actual settlement.
- b. The actual settlement of these securities took place on November 08, 2021, and November 09, 2021, which were immediate trading and settlement days. Hence, as on November 06, 2021, 32 scrips totalling to 40,916 were not appearing in registrar of securities. It is pertinent to mention that November 04, 2021, November 05, 2021, November 06, 2021, and November 07, 2021, was trading and clearing holidays.
- c. Goldbees are allocated in small fractions. Therefore, allocation of Goldbees among various constitutes have to be done manually and the same is time consuming. Hence the same is done on a periodic basis. Hence on that day it was pending. Pertinently, the value of the Goldbees was Rs. 2.

27.4.3. The Committee finds as under:

- a. In case of 33 scrips, the Noticee has accepted the inspection violation and attributed the observation to securities received from clients for early pay-in in the pool account not recorded in the back office on account of trading and clearing holidays from November 04, 2021, to November 07, 2021. Thus, the violation persists.

- b. For 1 scrip, pertains to securities of Yes Bank which are under lock in and are available with the Clearing Member. Noticee has started reporting the said securities post November 06, 2021. However, post inspection compliance does not absolve the Noticee for the violation already committed. Thus, the violation persists.
- c. Noticee has attributed 1 instance of gold bees not available in beneficiary account to recording of transactions pertaining to Goldbees on a periodic basis and not in real time basis leading to fractional difference. Thus, the violation persists.

27.5. Improper maintenance of books of accounts. viz. client ledgers

27.5.1. The Exchange verified the clients' ledger submitted by the Noticee. Upon verification, the Exchange observed mismatches in clients' ledger balances in the case of 9 out of 32 clients selected for sample scrutiny involving Rs. 17.31 lakhs.

27.5.2. In reply to SCN-1, the Noticee submitted as under: -

The Noticee states that for reconciliation of client's ledger balance for the period April 01, 2020, to October 14, 2021, position and transaction data should have been taken for entire period. However, on analysing and comparing the working of Exchange, it is observed that:

- a. Exchange for F&O segment has not taken position and transaction data of 2 days viz. August 28, 2020, and September 28, 2020, for clients at serial number – 1 and 4 to 9.
- b. Exchange for F&O segment has not taken position and transaction data of 1 day viz. May 08, 2020, for clients at serial number– 2 and 3.
- c. PS files downloaded from Exchange portal at end of day reflecting this data for respective dates.

27.5.3. The Committee finds as under:

- a. Upon perusal of data submitted by the Noticee vide its email dated March 02, 2022, it is observed that the Noticee has failed to submit documents in support of its claim. Thus, the violation persists.
- b. The Noticee has violated the Exchange circular no NSE/INSP/38743 dated August 30, 2018.

27.6. **Non maintenance of appropriate evidence regarding orders placed by the clients**

27.6.1. The Exchange verified the order placement mechanism maintained by the Noticee at its back office. Upon verification, the Exchange observed that the Noticee had not maintained appropriate evidence regarding the orders placed by its clients on the Exchange in all the 8 instances of 3 clients selected for sample scrutiny.

27.6.2. In reply to SCN-1, the Noticee submitted as under: -

- a. The Noticee operates from a single location and that it has 15 recorded telephone lines. The Noticee recording data from last 7-8 years.
- b. The observation period belongs to COVID-19 pandemic period during which time SEBI had provided an exemption from maintain call recordings for dealers working from remote location vide circular date July 30, 2021.

27.6.3. The Committee finds as under:

- a. The Noticee's claim that client code AV1218 not traded on April 09, 2020, June 22, 2020, June 29, 2020, and May 07, 2021. Further client code AV1217 not traded on May 27, 2021, is found to be correct. Thus, no violation persists on 5 dates.
- b. In case of remaining instances of client code AV1217, Noticee has provided Whatsapp chat screenshot, which is not acceptable as the mobile number is not visible.

- c. In case of 1 instance of client code AV1211 Noticee has provided post trade confirmation which is not acceptable since the Noticee is required to maintain pre-trade confirmation for the orders placed by its clients.
- d. The Noticee has violated Regulation 3.2.1 of NSEIL Regulations (CM Segment) and Regulation 3.4.1 of NSEIL Regulations (F&O Segment) and Exchange Circular No. NSE/INSP/37301 dated March 26, 2018.

27.7. Non-maintenance of client registration documents containing all the prescribed mandatory documents

27.7.1. The Exchange verified the client registration documents. Upon verification, the Exchange observed that the Noticee had not maintained client registration documents containing all the prescribed mandatory documents in the case of 2 out of 8 clients selected for sample scrutiny.

27.7.2. In reply to SCN-1, the Noticee submitted as under: -

- a. The client viz. Mr. Mahesh M Vashi had already closed the account at the time of SEBI's inspection, and a very old client (opened in 2011). The account was opened before the new management took over the company.
- b. Further the client Ms. Nisha Gupta and Mr. Mahesh Vashi account closure forms are available and the same are submitted.

27.7.3. The Committee finds as under:

- a. The Noticee's contention that the client Mr. Mahesh M Vashi (Client Code KVM4) closed the trading account is not acceptable as the Noticee is required to maintain client registration documents containing all the prescribed mandatory documents. Further the Noticee failed to submit client registration documents for verification. Thus, the violation persists.

- b. Upon perusal of the client registration documents submitted by the Noticee for the client Ms. Nisha Gupta (Client Code AV973), the Noticee's submission is found to be correct.
- c. Thus, the violation stands reduced to 1 client out of 8 clients.
- d. The Noticee has violated Exchange Circular No. NSE/INSP/13606 dated December 3, 2009.

27.8. **Unauthorized trading in client accounts and non-maintenance of appropriate evidence in respect of orders placed by its clients**

27.8.1. Unauthorized trading

- a. Upon verification of the email and desktops of the employees of the Noticee, it is observed that 19 clients of the Noticee, via email, complained about unauthorized trades executed in their account.
- b. Further, out of the above 19 clients, 3 clients of the Noticee, viz. Bluesea International, Mr. Manish Indukumar Shah, Ms. Nisha Gupta and 1 client Manish Shah HUF, filed complaints before the GRC alleging unauthorized trades undertaken by the Noticee in their accounts.
- c. Upon analysis of the order book of the Noticee in the F&O segment, it is observed that out of 4,28,64,658 trades (buy trades: 2,14,32,329 and sell trades: 2,14,32,329), 25% of the trades i.e. 1,18,39,160 trades (buy trades: 62,00,626 and sell trades: 56,38,534) pertain to Bluesea International (one of the complainants).
- d. It is observed that the counter parties for all these trades were two different clients of the Noticee who took counter positions in the same trade (same trade number, trade date, trade time, and trade quantity). It is further observed that similar patterns of potential unauthorized trades were executed by the Noticee in the case of 2 other clients viz. Mr. Manish Indukumar Shah and Manish Shah HUF, who have filed a complaint before the GRC.

- e. A similar pattern indicating unauthorized trades is also observed in the case of certain other clients who are not before the GRC. It is further observed that there are 266 pairs in which both the parties to the trade are the clients of the Noticee.
- f. Upon verification of the data analytics procedure, it is observed as under:
 - 831 pairs (unique 266 pairs) in which both the parties to the trades are clients of the Noticee.
 - 10 pairs of trades in which one of the clients appears to be potentially indirectly linked to employees/key managerial personnel of the Noticee.

27.8.2. Non-maintenance of pre-order confirmation

- a. The Noticee failed to provide the pre-order confirmation of the sample 953 trades executed by the clients. Therefore, it is deemed that the Noticee failed to maintain the order placement mechanism at its back-office.
- b. Furthermore, it is observed from the email of Mrs Pratibha Mahadik, erstwhile Compliance Officer, (email dated July 23, 2020) addressed to Mr Dhiren Shukla, Chief Executive Officer, (copy marked to Mr. Jairaj Bafna, erstwhile Head of Operations, Mr Sunil Jain, Director and Mr Anurag Shukla, Director), that the organization does not maintain any call recordings of clients placing, modifying and cancelling order.

27.8.3. Withholding of post-order confirmation

- a. Upon verification of 47 emails shared internally amongst the employees of the Noticee, it is observed that the employees withheld sending post-order confirmations via SMS and email to certain clients, as per the instructions of the Noticee.
- b. Further, the screenshot of the Whatsapp chat of one Mr Rohit Parmar whose contact is saved as "Rohit Trans" as retrieved from the laptop of Mr Sunil Jain, Director of the Noticee, also establishes withholding of post-order confirmation.

27.8.4. In reply to SCN-2, the Noticee submitted as under:

- a. The show-cause notice alleges that there are 19 clients who have complained about unauthorized trades and the show-cause notice alleges that there is non-maintenance of pre-order confirmation/ withholding of post-order confirmation in respect of certain clients. However, the issues are sub judice.
- b. One, Mr. Sunil Jain, had joined the Noticee, as a director, looking into the sales of the business. Mr. Jairaj Bafna, Priyank Mehta and Rohit Parmar, came to be employed at the Noticee in the operational part of the business. Mr. Bafna was the business consultant.
- c. The aforementioned employees started embezzling money to the tune of Rs. 9.35 crores of the Noticee as well as its clients. Mrs. Manorama Shuka (wife of Mr. Dharendra Shukla, director) was appointed as the Director of the Noticee. Mr. Dharendra Shukla, came to be diagnosed with serious medical conditions and became unable to perform his official duties.
- d. Mr. Anurag Shukla (son of Mr. Dharendra Shukla) was appointed as the Director of Noticee. Mr. Anurag Shukla became aware that Mr. Sunil Jain had been embezzling money of Noticee. This came into Mr. Shukla's knowledge when one of its clients i.e. "Blueseas International" claimed before Exchange GRC, that there were some unauthorized trades performed in its accounts.
- e. After receipt of the complaint, the Noticee conducted an internal investigation and pursuant thereto, Mr. Shukla filed a police complaint against Mr. Sunil Jain and Mr. Jairaj Bafna, inter alia, alleging fraud and requesting criminal proceedings to be initiated under the relevant sections of Indian penal Code and the Information Technology Act.
- f. The Senior Police Inspector, Vile Parle Police station is currently seized of the matter. Pertinently, it appears that Mr. Jain was acting in cohorts with Mr. Jairaj Bafna. The Noticee provided a copy of the complaint in support of its claim.

- g. Mr. Shukla filed a criminal complaint against Mr. Jain, Mr. Bafna, Mr. Priyank Mehta and Mr. Rohit Parmar, as well as two clients of the Noticee i.e., Ritesh B. Jain and Ms. Urvi Milin Shah, with the Vile Parle Police Station. The Noticee provided a copy of the complaint in support of its claim.
- h. An application was filed before the Metropolitan Magistrate Court for directing the Police Station to register a First Information Report ("FIR") in respect of the complaint and subsequently an FIR was registered. The Noticee provided a copy of the FIR in support of its claim. One of the clients Manish Shah also registered an FIR against Mr. Sunil Jain and Mr. Jairaj Bafna for fraud. The same client who has filed complaint for unauthorized trading.
- i. Towards commission of offence, Mr. Jain has addressed internal emails to the other accused, which substantiate that the trades were carried by the said accused as per the instructions of Mr. Jain who happens to be the mastermind behind commission of offence. Further, these accused used and siphoned the funds of the clients, by virtue of which the stocks / shares of the clients were depleted, losing their quantum value, as they had entered into reversal trade.
- j. Further, the accused were involved in sending e-mails with wrong account holding to give clients false information inasmuch as the shares notified in the e-mails were factually not the holdings of the clients. In fact, in many cases due to circular trading and reversal trading by and amongst all the accused, the number of shares and capital invested by the clients decreased, which was all done by the accused in furtherance of their common intention to play a fraud on the clients.
- k. In the circumstance, the allegations of unauthorized trades, non-maintenance of pre-order confirmation / withholding of post-order confirmation in respect of certain clients, is subject matter of a criminal proceeding where certain employees of the Noticee played a fraud on the Noticee and its clients. Further, one constituent of Noticee, Mr. Manish Shah has also filed a criminal complaint against Mr. Sunil Jain and Mr. Jairaj Bafna.

- l. It is a settled position that a company cannot be held vicariously liable for fraudulent actions of its employees. The Noticee certainly cannot be subjected to a regulatory proceeding for illegal actions of certain employees/ directors who have themselves played a fraud on the broker. If this was allowed, an absurdity in law will arise where a stockbroker will be held responsible for any illegal action of all its employees. This cannot be the intention of the extant law.
- m. Further, it is pertinent to mention that in respect of the criminal complaints filed against the persons involved in the alleged fraud, all anticipatory applications filed by Mr. Sunil Jain, Mr. Jairaj Bafna, Mr. Priyank Mehta, Ritesh B. Jain and Ms. Urvi Milin Shah have been rejected by the concerned Hon'ble Sessions Court - Dindoshi.
- n. Separately, it is also pertinent to note that insofar as the GRC orders in favour of Bluesea International, Mr. Manish Indukumar Shah, Ms. Nisha Gupta and Manish Shah HUF, respectively, are concerned, the Noticee has attempted to initiate arbitration proceeding to challenge the said GRC orders. However, the Exchange has prevented the Noticee to avail of the opportunity to arbitrate and exercise its legal rights, in view of the trigger of SOP against the Noticee. The Noticee has challenged the very said SEBI SOP Circular.
- o. In fact, the allegation in the show-cause notice that 266 unique pairs in the unauthorized trades are consisting of the aforementioned entities, i.e., Bluesea International, Mr. Manish Indukumar Shah, Ms. Nisha Gupta and Manish Shah HUF. In such circumstance, it becomes even more important for the Committee to refrain from giving any findings in this regard.
- p. If the Committee ends up giving any adverse findings, the Noticee's legal rights in both the proposed arbitration proceedings as well as in the writ petition and the criminal proceedings against Mr. Sunil Jain and others, will get adversely affected.
- q. It is therefore requested that the allegation be kept in abeyance until the pendency of the criminal proceedings and the writ petition

filed by the Noticee herein before the Hon'ble High Court of Bombay, as the matters are presently sub-judice. The outcome of the same will have significant bearing on the present proceedings.

27.8.5. The Committee finds as under:

- a. The Noticee accepted the violation and attributed the same due to certain employees of the Noticee played a fraud on the Noticee and its clients. Thus, the violation persists.
- b. The Noticee's contention that the Noticee cannot be subjected to a regulatory proceeding for illegal actions of certain employees/directors is not acceptable as the Noticee cannot deny the action of its employees. Further, the alleged act of crime itself indicates that the Noticee does not have adequate supervision and control over the activities of its employees.
- c. The Noticee's contention that it is a settled position that a company cannot be held vicariously liable for fraudulent actions of its employees is not applicable in this matter as the present proceedings is civil in nature. The Noticee is bound to follow the rules, regulation, byelaws, circular of the exchange issued from time to time. The Noticee cannot take the contention that the violation/ non-compliances committed by the Noticee was due to action/inaction of its employees. In view of the same the Noticee's request to keep the matter in abeyance until the pendency of the criminal proceedings is not acceptable.
- d. The Noticee contended that although GRC orders are in favour of clients, the Noticee is unable to file arbitration due to application of SEBI SOP Circular. As per the Exchange circular No. NSE/ISC/46858 dated December 31, 2020, the Noticee is required to inform its intention to pursue the next level of resolution i.e. Arbitration, within 7 days from the date of receipt of the GRC order to the Exchange. It is observed that the GRC decided the claim in November 10 and November 24, 2021. However, the Noticee has failed to inform its intention to file an arbitration within 7 days.
- e. Further as per Exchange circular No. NSE/ISC/46858 dated December 31, 2020, the Exchange shall require blocking 100% of

the amount decided as admissible by the GRC out of deposit of the Trading Member. However, the funds available with the Exchange were insufficient to meet the obligation of the Noticee towards GRC orders and it also failed to provide funds to pay off all the complainants despite several follow-ups, and hence the Exchange invoked the provisions of SEBI Circular dated July 1, 2020, on Standard Operating Procedure in cases of Trading Member / Clearing Member leading to default on February 2, 2022. Thus, the Noticee is itself responsible for triggering SEBI SOP circular due to its inaction and/or by failure to deposit money towards GRC orders.

- f. The Noticee contended that the writ petition filed by the Noticee challenging SEBI SOP Circular is pending before the Hon'ble Hight Court and the matter is sub-judice. It is observed that the Noticee has challenged the SEBI SOP circular before the Hon'ble Hight Court and there is no stay from the Hon'ble Hight Court on operation of the said circular and/or action taken by the Exchange under the said SEBI SOP circular. Thus, the Noticee's contention that the matter is sub-judice is not acceptable.
- g. The Exchange vide email dated March 26, 2024, had given an opportunity to the Noticee to deposit Rs. 71.96 lakhs towards the GRC orders, so that, the Exchange could stop further action under the SEBI SOP Circular dated July 1, 2020, and allow the Noticee to file arbitration against the GRC orders, subject to deposit of funds. However, the Noticee has failed to deposit the said funds even after repeated follow-ups. Thus, the violation persists.

27.9. **Potential portfolio management scheme/potential guaranteed returns scheme run by the Noticee**

- 27.9.1. Upon review of the complaints/allegations made by the clients of the Noticee, it is observed from one email that the representatives of the Noticee guaranteed assured returns to the clients. The clients were induced to invest in the portfolio management scheme of the Noticee.

27.9.2. Unexplained expenses with related entities/entities which appear to be potentially indirectly linked

Upon verification of the books of accounts of the Noticee, it is observed that certain amounts were transferred to the entities towards unexplained expenses:

- a. Rs. 41.45 lakhs to Advantage Commodities Pvt. Ltd. (Director of Advantage Commodities Pvt. Ltd. is Mr Jairaj Bafna who is the erstwhile Head of Operations of the Noticee)
- b. Rs. 22.19 lakhs to Artha Vrddhi Limited ("**AVL**") (holding company of the Noticee)

The details are as under:

(Rs. in Lakhs)

| Sr. No. | Transaction | Transferred to Advantage Commodities Pvt. Ltd. | Transferred to Artha Vrddhi Ltd. |
|---------|---|--|----------------------------------|
| 1 | Annual bill raised as per agreement | 16.99 | 0.00 |
| 2 | Branch common expenses | 17.44 | 0.00 |
| 3 | Professional fees | 7.02 | 13.77 |
| 4 | Reimbursement | 0.00 | 8.42 |
| | Total expense booked | 41.45 | 22.19 |
| 5 | Amount transferred through bank payment | 32.67 | 27.81 |

27.9.3. In reply to SCN-2, the Noticee submitted as under: -

- a. The show-cause notice makes allegation in respect of a complaint filed by one client of the Noticee alleging that the Noticee had guaranteed assured return based on an oral conversation with a representative of Noticee.
- b. The said complaint was withdrawn by the client. Therefore, the Noticee has not offered any potential portfolio management scheme/ potential guaranteed return scheme to any clients at any point in time.
- c. The allegation that the Noticee transferred funds for business other than securities involving personal financial liability in violation of SCRR is absurd and without any cogent evidence.

- d. AVL is a parent company of the Noticee, and both the companies share the premises. Further, AVL used to provide consultancy and HR services to the Noticee. In respect of transfer of Rs. 115.57 lakh to Advantage Commodities Pvt Ltd, the said entity was not a related entity. The entity is fully owned by Mr. Jairaj Bafna, who is a co-accused in the fraud by Mr. Sunil Jain. The said entity's office was adjacent to the office of the Noticee, until the Noticee became aware of misdoings of Mr. Sunil Jain. Thereafter, the Noticee shifted its office premises to a new address.
- e. The transactions with Advantage Commodities Pvt. Ltd. and AVL are not in the nature of personal financial liability. No funds of the clients are at the risk of being mis-utilized.

27.9.4. The Committee finds as under:

- a. The Noticee claimed that the client has later withdrawn the compliant. A mere withdrawal of complaint does not absolve the Noticee from the fact that they were promising the client for assured return.
- b. Further, w.r.t. unexplained expenses transferred to AVL, the Noticee has attributed the payments to consultancy and HR services. However, the Noticee has not provided any documentary evidence to substantiate its claim.
- c. For unexplained expenses paid to Advantage commodities Pvt Ltd (owned by Mr. Jairaj Bafna), who is a co-accused in the fraud by Mr. Sunil Jain, the Noticee submitted that the Noticee has moved their office on being aware of misdoings. Also, the Noticee has mentioned that no client funds are at risk which is not acceptable as the Noticee is not able to meet client payables.
- d. Hence the committee finds that the notice was conducting Potential portfolio management scheme/potential guaranteed returns scheme.

27.10. Improper maintenance of client ledgers
27.10.1. Mismatch in derived client ledger balances

Upon reconstruction of client ledgers, it is observed that there is a mismatch in the derived closing balances vis-à-vis closing balances as per the Noticee involving Rs. 176.88 lakhs as of February 28, 2022

27.10.2. Inappropriate journal entries in client ledgers

Upon verification of the client ledgers, the auditor observed that for the purpose of client balance reconstructing 1,737 JV entries passed by the Noticee in 1,238 clients' ledgers have not been considered. Aggregate balance of these JV entries is Rs. 16.09 lakhs credit balance (aggregate of Rs. 88.38 lakh credit entries and Rs. 72.29 lakhs debit entries).

The details are as under:

Rs. in lakhs

| Sr. No. | Particulars of JV | Count of Entries | Amount |
|---------|---|------------------|---------|
| 1 | Balance written off | 198 | 13.33 |
| 2 | Miscellaneous | 355 | 24.98 |
| 3 | Postage & courier charges | 62 | (0.08) |
| 4 | Documentation charges | 28 | (0.18) |
| 5 | Printing and documentation charges | 998 | (4.48) |
| 6 | Charges not charged | 93 | (22.95) |
| 7 | Dispute relating to delay payment charges | 3 | 5.48 |
| | Total | 1,737 | 16.09 |

27.10.3. Client balances potentially written off by levying printing and stationary charges

Upon verification of client ledgers, it is observed that the Noticee levied printing and stationary charges on 774 clients amounting to Rs. 4.48 lakhs. These clients had a certain amount of credit balance in their accounts. The Noticee levied printing and stationary charges thereby reducing the credit balance to zero. The printing and stationary charge levied on the clients was not a constant amount but ranged from Rs. 12.29 to Rs. 5,958/-. Further, the printing and stationary charges were levied only for the period September 2020 to December 2021. In the case of clients wherein the charges were

reversed, such reversals too occurred for the period October 2020 to September 2021. Upon verification of review of email backup of employees of the Noticee, it is observed that Mr. Bhupendra Darji, client (UCC: AV617), vide email May 31, 2021, to Mr. Jairaj Bafna, erstwhile Head of Operations disputed the levy of printing and stationary charges.

27.10.4. In reply to SCN-2, the Noticee submitted as under:

- a. As per the Noticee's reconciliation of clients' ledger balances, it is observed that there is a huge discrepancy in the Client Balance Reconstruction ("**CBR**") for the period January 1, 2019, to February 28, 2022, due to the mismatch in the position and transaction data in the client's trade files.
- b. The Noticee has observed huge mismatches between its own calculation and the working as provided by the Exchange on a consolidated basis. Since, the Exchange has not provided day-wise trade summary of client's trades for its working, the Noticee is handicapped in being able to point out the exact days on which the trade mismatch has been observed.
- c. Further, Exchange has not considered the Offer for Sale ("**OFS**") & Mutual Fund Service System ("**MFSS**") trades in the ledger for some clients' and certain other charges for printing; excess margin; penalty; delay payment interest as levied on the clients.
- d. As per the Exchange, total ledger amount mismatch for debit clients is Rs. 3,97,79,912.00/-, and for credit clients, the mismatch is Rs. 2,63,26,911.00/-. However, as per the Noticee's calculation, the total ledger amount mismatch for debit clients is Rs. 3,04,10,181.16/-. Similarly, the ledger amount mismatch for credit clients is Rs. 1,80,09,449.25/-. The Noticee provided client-wise explanation for the mismatch in support of its claim.
- e. No client has disputed any of the ledger entries in their account. Even the printing and stationary charges were based on client consent in terms of the KYC documentation. The Noticee provided its Policies and Procedures (Mandatory) as prescribed by the SEBI and Exchanges in support of its claim. Clause 7

under "Other Charges" mentions that the Noticee has the ability to levy extra charges for "any other services not specified above", meaning the Noticee can levy charges towards stationery and printing charges. In the era of digitization, printing is avoided as it results in waste of paper and clients are discouraged from asking for unnecessary prints.

- f. Thus, only such clients who require physical copies are charged money. The charges for printing and stationery would vary as the clients are charged on actuals. Further, the Noticee recorded these charges in office visitor's register and the same was provided to the forensic auditor during the conduct of the forensic review. The Noticee provided its office visitor's register and courier register reflecting the said entries in support of its claim.
- g. No client has raised any dispute regarding the printing/ stationary charges as they were aware of the charges in the ledger. There was only one dispute raised by one client (AV617) as there was a clerical error in charging the said client due to some software glitch. However, the said error has also been duly rectified by refunding the amount to the client.
- h. As for the excess margin charges, it is pertinent to note that the Noticee had the ability to levy additional charges for excess margin to the client in terms of Clause D under "Delay Payment Charges and Penalties" of the Policies and Procedures (Mandatory) of the Noticee, as prescribed by the SEBI and Exchanges.
- i. Therefore, the Noticee had levied such additional charges for excess margin. However, the said charges were never passed on and recovered from the said client. These charges were in turn based on the charges levied upon the Noticee by its Clearing Member(s), formerly, ISSL, and present Clearing Member, Globe Capital Markets Limited.
- j. The Noticee provided interest calculation for the interest levied by Globe Capital Markets Limited in support of its claim. The Noticee sent quarterly and weekly ledgers to the client and due payment was made by the client. Further, no dispute or

discrepancy was ever raised by the client against the said additional charges.

- k. Further, Exchange has not raised or suspected any discrepancy related to the mismatch of client ledgers at any point of time during the joint inspection with SEBI, and the regular inspections and a limited purpose inspection carried out by Exchange during January 2019 to February 2022.
- l. The Noticee provided the observation letter issued by SEBI for its joint inspection with Exchange in support of its claim.

27.10.5. The Committee finds as under:

Mismatch in derived client ledger balances

- a. The Noticee has attributed mismatches to certain entries not considered by forensic auditors and difference in the clients' trade data considered for arriving at the balances of clients.
- b. Accordingly, Committee vide its directions dated January 25, 2023, directed the Noticee to reconcile the client ledger balances with forensic auditors in coordination with the Exchange.
- c. The Noticee vide email dated March 13, 2023, informed Exchange that they have sought ledger balance confirmation from clients whose balances are not matching with balances crystallized by forensic auditors.
- d. The Exchange also verified the trade and obligation files provided by the Noticee to confirm the contention and informed Noticee to provide proper response along with documentary evidence.
- e. As the Noticee failed to provide further substantial data, the PS03 files for FO and CD segments provided by the Noticee, were provided to the auditors on April 11, 2023, for their verification with data provided by NCL. Upon verification, it was observed that Noticee had provided additional 177 files (i.e., dates) for CD segment and 30 files (i.e., dates) for F&O segment.

- f. Hence, the Exchange vide mail dated April 28, 2023, requested NCL to provide the complete data as the forensic auditors had to re-calculate the balances using the revised files.
- g. NCL vide mail dated May 25, 2023, and July 14, 2023, has provided additional files.
- h. Accordingly, forensic auditor incorporated all the files as received from the Noticee and NCL to arrive at recalculated balances of clients and provided the same to the Exchange on July 25, 2023. Exchange, vide mail dated July 26, 2023, sent the revised crystallized balances to the Noticee for confirmation.
- i. However, Noticee did not provide a satisfactory response along with documentary evidence even after multiple reminders. Accordingly, violation will persist.

Inappropriate journal entries in client ledgers

- a. The Noticee was unable to provide any working or justification for the JVs passed in client ledger. Hence violation will persist.
- b. On perusal of observation details in SCN-2 it was noted that the forensic auditor had not considered these JVs while computing client ledger balances. Accordingly passing of these JV will not adversely impact the client's payables.

Client balances potentially written off by levying printing and stationary charges

- a. The Noticee claimed that printing and stationery charges were based on client consent in term of KYC documentation where clause 7 under other charges, Noticee can levy extra charges for 'any other services not specified above'.
- b. Hence, Noticee has charged printing and stationery charges to those clients who require physical copies, and this amount was not disputed by clients.

- c. On perusal of KYC documents provided by Noticee, it was observed that Noticee has not specifically mentioned charges for printing and stationery will be receivable from clients. Further, Noticee has not provided any documentary evidence of client requesting physical copies nor they have provided a basis for charges debited to the client. Thus, the violation persists.
- d. As per Exchange Circular No. NSE/INSP/38743 dated August 30, 2018, the trading members are required to maintain the clients' ledgers in prescribed standard format.
- e. Thus, the Noticee violated the regulatory provisions mentioned above by failing to maintain the clients' ledgers as prescribed by the Exchange.

27.11. **Shortfall of clients' funds**

27.11.1. Upon verification of the books of accounts of the Noticee, it is observed that the Noticee had a shortfall of clients' funds to the extent of Rs. 122.85 lakhs as of February 28, 2022. However, the shortfall increased to Rs. 149.53 lakhs due to the following adjustments:

Rs. in lakhs

| Sr. No. | Particulars | Amount before Adjustment | Amount after Adjustment | Amount of Adjustment | Remark |
|---------|---|--------------------------|-------------------------|----------------------|--------------------------------|
| 1. | Total credit balance of clients | 263.26 | 236.26 | 0.00 | - |
| 2. | Funds available with NSE/NCL | 48.00 | 45.09 | 2.91 | Pending NSE dues |
| 3. | Funds available with BSE/ICCL | 35.97 | 30.97 | 5.00 | Pending BSE and ICCL dues |
| 4. | Funds available with Clearing Member | 54.78 | 36.03 | 18.75 | Already considered in Sr. No.2 |
| 5. | Total of day end balance in all bank accounts | 1.66 | 1.66 | 0.00 | - |
| | Shortfall of clients' funds | 122.85 | 149.53 | 26.68 | - |

27.11.2. In reply to SCN-2, the Noticee submitted as under: -

- a. The Noticee denies that there is any shortfall of clients' funds to the extent of Rs. 122.85 lakhs (pre-adjustment) and Rs. 149.53 lakhs (post-adjustment) as on February 28, 2022.
- b. The Noticee was having clients' funds of Rs. 6.74 lakhs in excess of the credit balance of the clients amounting to Rs. 1.8 crores on February 28, 2022.
- c. As on date, the Noticee has total available funds of Rs. 4.50 crores. The Noticee provided following exhibits reflecting total available funds of the Noticee in support of its claim:
 - Noticee's enhanced supervision report of the funds submitted to Exchange, as on December 9, 2022
 - Noticee's collateral and margin status report as on April 30, 2022
 - Noticee's Liquid Assets Breakup Report / Holding Statement with ICCL and NCL as on February 25, 2022
- d. Therefore, the Noticee has Rs. 4.50 crores funds available. The details are as under:

| Particulars | Amount (in Rs.) |
|---|------------------------|
| NSE Clearing Limited Deposit | 54,00,000.00 |
| BSE Limited Deposit | 1,34,80,219.00 |
| Globe Capital Market - Clearing Member | 34,02,636.12 |
| All Bank Balance | 10,17,854.00 |
| ISSL Funds: Transfer of funds from NCL to NSEIL, in respect of the GRC Order in favour of Notice against ISSL | 2,15,46,141.00 |
| TOTAL AVAILABLE FUNDS AS ON 12.12.2022 | 4,48,46,840.1/- |

- e. The GRC of the Exchange passed an order dated July 21, 2021, in favour of the Noticee having claim of Rs. 2.15 crores against ISSL. Further, NCL vide letter dated September 8, 2022, had informed the Noticee that it was in the process of releasing the entire GRC claim amount in favour of the Noticee within 10 working days.

- f. The Noticee had called upon NCL to immediately release the entire claim amount of Rs. 2.15 crore to the Noticee's bank account, vide notice dated November 3, 2022.
- g. However, the Noticee was shocked and dismayed to learn from NCL that the NCL had already released the entire claim amount to the NSEIL on October 18, 2022, following a request from the Exchange to release the amount in their favour due to the trigger of the SOP against the Noticee.
- h. Therefore, there is no actual shortfall of clients' fund. The Noticee has already provided a working of the entire clients' funds.

27.11.3. The Committee finds as under:

- a. The Noticee contended that the Noticee had clients' funds of Rs. 6.74 lakhs in excess of the credit balance clients amounting to Rs. 1.80 crores as on February 28, 2022. Further, the funds of Rs. 4.50 crores as on December 12, 2022, is available with the Exchange/Clearing Corporation/Clearing Member. However, the committee notes that;

- NCL's deposit amounting Rs. 54 lakhs as against Rs. 45 lakhs considered by Exchange:

On perusal of document provided by Noticee, it was observed that Noticee has provided Exchange capital and collateral report dated February 04, 2022, and the violation was observed for dated February 28, 2022. Thus, the same cannot be considered. Hence, the Noticee's claim is not acceptable.

- BSE's deposit amounting Rs. 134.80 lakhs against Rs. 30.97 lakhs considered by Exchange:

On perusal of ICCL liquid assets breakup report provided by Noticee, it was observed that Noticee has provided liquid assets breakup report dated February 25, 2022, and the violation is observed for dated February 28, 2022. Hence, the Noticee's claim is not acceptable.

- Globe Capital funds amounting to Rs. 34.02 lakhs as against Rs. 36.03 lakhs considered by Exchange:

It was observed that Exchange has already considered the amount from collateral file, while calculating shortfall of client funds.

- All bank balance amounting to Rs. 10.17 lakhs as against Rs. 1.66 lakhs considered by Exchange:

Noticee has claimed bank balance of Rs. 10.17 lakhs as on February 28, 2022. However, the Noticee failed to submit any supporting documents in support of its contention. Thus, the claim of the Noticee is not acceptable.

- ISSL funds amounting to Rs. 215.46 lakhs:

Noticee claim of deposit of Rs. 2.15 Crores with ISSL is not acceptable as the said deposit was under arbitration and doubtful in nature as of February 28, 2022. Thus, the same cannot be considered.

- b. As per Exchange Circular No. NSE/INSP/33276 dated September 27, 2016, the total available funds, i.e., cash and cash equivalents with the stockbroker and the Clearing Corporation/Clearing Member should always be equal to or greater than client's funds as per ledger balance.
- c. Given the findings mentioned above, Committee finds that there is shortfall of client funds as on February 28, 2022, amounting to Rs. 149.53 lakhs.
- d. Thus, the Noticee violated the regulatory provisions mentioned above.

27.12. **Non-settlement of clients' funds**

- 27.12.1. Upon verification of the settlement process undertaken by the Noticee for a sample of 72 clients as of February 28, 2022, it is observed that the Noticee did not settle the accounts of 50 clients

involving Rs. 10.53 lakhs as per client ledger provided by the Noticee and Rs. 13.21 lakhs as per the derived client ledger.

27.12.2. In reply to SCN-2, the Noticee submitted as under: -

- a. The Exchange blocked the Noticee's funds, and even after making several requests, the Exchange has not released the said funds. It was informed to the Exchange that the funds were required for settling the client accounts. Yet, the Exchange has failed to release funds to the Noticee, even though the Noticee has sufficient funds in its account.
- b. The same contention was made in the reply to show-cause notice dated January 5, 2022. Hence the Noticee cannot be said to have violated Exchange Circular No. NSE/INSP/ 13606 dated December 3, 2009, and Exchange Circular No. NSE/INSP/33276 dated September 7, 2016.

27.12.3. The Committee finds as under:

- a. The Noticee claimed that due to blocking of funds by Exchange, the Noticee was not able to settle the clients' funds as on February 28, 2022. It is observed that Exchange invoked the provisions of the SEBI SOP Circular on February 03, 2022. Further, the Exchange, as per the SEBI SOP Circular, instructed the banks that the balance of all bank accounts of Noticee shall be frozen for debit.
- b. Hence, the Noticee's contention of non-settlement of client's funds as on February 28, 2022, due to frozen of bank accounts is found to be correct.
- c. The Committee notes that the Exchange has initiated the payments to the client's basis the balances arrived by forensic auditors as per the SEBI SOP Circular.
- d. However, the Committee notes that similar violation was observed during the limited purpose inspection covered in SCN-1 and previous inspections of the Exchange. Hence the

Committee finds that no separate action is warranted against the notice in the aforesaid violation.

27.13. Non-reconciliation of securities

27.13.1. Upon verification of the derived securities balance vis-à-vis the securities available in the beneficiary accounts maintained by the Noticee as of February 28, 2022, it is observed that the Noticee failed to reconcile the securities in 169 instances involving Rs. 31 lakhs.

27.13.2. In reply to SCN-2, the Noticee submitted as under: -

- a. As per the forensic auditor, there is reconciliation of all the clients' securities. Further, 148 clients out of the 169 clients did not have their demat account with the Noticee.
- b. The said clients were having their demat account with some other depository participant. Thus, their pay-in obligations were settled directly between the Exchange and their respective depository participants, and the Noticee had no role to play in the same. The Noticee provided client-wise explanation in support of its claim.

27.13.3. The Committee finds as under:

- a. The Committee observed that the forensic auditors had recomputed the securities payable to client's basis additional details received from NCL and the Noticee.
- b. Post re-computation, the securities were observed to be payable to 24 clients as under:
 - i. For 2 clients, securities transfers were initiated.
 - ii. For 22 clients, the securities kept on hold on account of debit balances in client ledger, pertain to related party, securities are to be received from clients as well, demat account confirmation was pending or the clients were not contactable.
- c. Further, it is observed that all the securities payable to clients were either available in demat account of the Noticee or the

Clearing Member. However, the Noticee has failed to reconcile the securities payable to client. Thus, the violation will persist.

- d. As per Exchange Circular No. NSE/INSP/10605 dated April 21, 2008, and Exchange Circular No. NSE/INSP/29096 dated March 11, 2015, the trading members are required to reconcile the clients' accounts.
- e. Thus, the Noticee violated the regulatory provisions mentioned above by failing to reconcile the clients' accounts as prescribed by the Exchange.

27.14. Pledging of securities of credit balance clients

27.14.1. Upon verification of the financial statements of the Noticee, it is observed that in 473 share pledge transactions pertaining to 270 clients, the Noticee has pledged clients' shares for availing loans from certain financial institutions as under:

- a. 156 share pledging transactions of 120 clients involving Rs. 332.66 lakhs pertained to clients having credit balance on the date of pledge.
- b. 317 share pledging transactions pertained to cases where there was debit balance on the date of pledge. Out of 317 share pledging transactions, in 102 share pledging transactions of 83 clients involving Rs. 483.70 lakhs, the value of shares pledged is more than the debit balance to the extent of Rs. 214.05 lakhs.

27.14.2. In reply to SCN-2, the Noticee submitted that the allegations are already covered in the Committee order dated September 29, 2021, wherein the Committee levied a total penalty of Rs. 42 lakhs on the Noticee, for the default of pledging of securities of credit balance client and not un-pledging/ disposing off the clients' securities pledged with banks / NBFCs.

27.14.3. The Committee finds as under:

- a. Noticee claimed that Exchange vide its order dated September 29, 2021 has already levied penalty of Rs. 41.35 lakhs for

Pledging of client securities with Banks/NBFCs post September 01,2019.

- b. On perusal of Exchange order dated September 29,2021, it is observed that the Exchange has levied combined monetary penalty of Rs. 41.35 lakhs for observation pertaining to pledging of securities of credit balance clients and not unpledged/disposed off client securities pledged with bank/NBFC for inspection period from January 01, 2018, to December 31, 2019.
- c. Considering the overlapping dates of observation with current inspection, the Committee decided that no separate action is warranted against the Noticee in the aforesaid matter.

27.15. Member has not unpledged/disposed off client securities pledged with banks/NBFCs by August 31, 2019

- 27.15.1. Upon verification of the books of accounts of the Noticee, it is observed that the Noticee availed a loan from Bajaj Finance Ltd. by pledging client shares. On December 13, 2019, Bajaj Finance Ltd. invoked securities of 32 clients and sold the said securities for Rs. 175.35 lakhs. A similar violation was observed during the inspection period from January 1, 2018, to December 31, 2019.
- 27.15.2. In reply to SCN-2, the Noticee submitted that the allegations are already covered in the Committee order dated September 29, 2021, wherein the Committee levied a total penalty of Rs. 42 lakhs on the Noticee, for the default of pledging of securities of credit balance client and not un-pledging/ disposing off the clients' securities pledged with banks / NBFCs.
- 27.15.3. The Committee finds that considering the overlapping dates of observation with current inspection, the Committee decided that no separate action is warranted against the Noticee in the aforesaid matter.

27.16. Non-maintenance of client registration documents containing all the prescribed mandatory documents

27.16.1. The Noticee was requested to provide KYC documents pertaining to 81 clients. The Noticee failed to provide the KYC documents for 9 out of 81 sample clients for verification. Therefore, it is deemed that the Noticee failed to maintain the client registration documents containing all the prescribed mandatory documents in respect of the said 9 clients. The details are as under:

| Sr. No. | UCC | Client PAN | Client Registration Date | Client Name |
|---------|--------|------------|--------------------------|----------------------------|
| 1 | AV1217 | AAPFB5700R | 18-Nov-2019 | BLUESEA INTERNATIONAL |
| 2 | AV658 | AADPG3320L | 30-Oct-2015 | JITENDRA KUNDANLAL GUPTA |
| 3 | AV1190 | AAFPS0937D | 18-Sept-2019 | MANISH INDUKUMAR SHAH |
| 4 | RMA03 | ABQPN1241D | 23-Jan-2016 | PRASAD MAHADEO NAIK |
| 5 | RPT08 | AALPS7121H | 18-Jan-2016 | SARWANKUMAR DEVIDUTT SARAF |
| 6 | RSP18 | ABSPJ2943A | 14-Jul-2014 | SWETA MANOJ JAIN |
| 7 | AV793 | AZNPS6965J | 14-Jul-2016 | PAURNIMA SIVARAMAKRISHNAN |
| 8 | KTM2 | ACIPT4855A | 10-May-2005 | MAYANK TRIVEDI |
| 9 | AV822 | AABCI1052N | 27-Sept-2016 | ISPA EXIM PVT. LTD. |

27.16.2. In reply to SCN-2, the Noticee submitted as under:

- a. The Noticee has KYC documents for all its clients including for 8 out of the 9 sample clients.
- b. However, the Noticee could not provide documents for KYC verification at the time of the forensic audit, as the Noticee was in the process of shifting its office during the forensic audit and thus could not produce the said KYC documents of 9 clients at that time.
- c. However, the Noticee has the KYC documentation of all 8 clients. In respect of 1 client, the Noticee was unable to get the documentation, as the old management of Noticee, i.e., Transparent Shares and Securities Limited, had the KYC documentation and the trading account of the said client has been inactive for a considerable period of time. The Noticee provided the documents in support of its claim.

27.16.3. The Committee finds as under:

- a. The Noticee stated that due to shifting of office during forensic audit they were not able to provide KYC documents.
- b. Further Noticee has provided KYC documents of 8 clients and found to be correct. However, the Noticee was unable to provide KYC documents of 1 client due to a change in management. However, Noticee is required to maintained KYC documents of all clients. Hence, the violation persists.
- c. The Committee observed that the Noticee's claim that the documents could not be provided due to shifting of the office is not acceptable as similar violation was observed during the limited purpose inspection covered in SCN-1.
- d. As per Exchange Circular No. NSE/INSP/13606 dated December 03, 2009, the Trading Members are required to maintain the client's registration documents.
- e. Thus, the Noticee violated the regulatory provisions mentioned above by failing to maintain the client's registration document as prescribed by the Exchange.

27.17. **Shortfall in net worth**

- 27.17.1. Upon verification of the net worth certificate submitted by the Noticee certifying a net worth of Rs. 109.31 lakhs as of September 30, 2021, vis-à-vis the trial balance and balance sheet, it is observed that the Noticee incorrectly deducted the value of the non-allowable assets, viz. fixed assets, doubtful debts and advances and intangible assets. Upon considering the correct value of the non-allowable assets mentioned above, the net worth of Noticee stands revised at (-ve) Rs. 87.18 lakhs of September 30, 2021, which is below the minimum net worth of Rs. 1 crore prescribed by the Exchange.

27.17.2. In reply to SCN-2, the Noticee submitted as under: -

- a. The Exchange failed to consider that Rs. 2.15 crores of clients' funds of the Noticee stand confiscated by the Exchange, as a result of which Noticee is shown to be facing a shortfall in its network.
- b. The actual network of the Noticee, after considering the confiscated funds, is above the Exchange requirement.
- c. If the claim amount of Rs. 2.15 crore of the Noticee is added to the Noticee's network, presently Rs. 87 lakhs negative, the same would amount to Rs. 1.28 crores which is above the Exchange required threshold.
- d. The forensic audit report considered the amount of Rs. 2.15 crores as a non-allowable asset against doubtful debts and advances and accordingly, deducted it from the network calculation of the Noticee.
- e. However, as per the NCL letter dated September 8, 2022, the said amount can no longer be treated as a non-allowable asset and should be considered towards the computation of the Noticee's network.

27.17.3. The Committee finds as under:

- a. The Noticee's claim to consider the deposit of Rs. 2.15 crores with ISSL are not acceptable as, the said deposit was under arbitration and doubtful in nature. Further, though the said deposit was released in October 2022, the violation still persists as on September 30, 2021.
- b. As per Rule 33 of Chapter III of the Rules of the Exchange for continued admittance, the Relevant Authority shall from time to time prescribe conditions and requirements for continued admittance to trading membership which may, inter alia, include maintenance of minimum net worth and capital adequacy, renewal of certification, if any, etc. Further, as per Dr L.C Gupta's net worth computation method, doubtful debts

are non-allowable assets and should be deducted from the Capital & Free Reserves.

- c. Thus, the Noticee violated the regulatory provisions mentioned above by failing to maintain the minimum net worth prescribed by the Exchange.

27.18. Incorrect mobile numbers and email ids of the clients uploaded on the UCI database

27.18.1. Upon verification of the UCI database vis-à-vis the client registration documents, it is observed that the Noticee uploaded incorrect mobile number and email ID in the UCI database of the Exchange. The details are as under:

- a. Incorrect mobile number - 2 out of 81 clients selected for sample scrutiny
- b. Incorrect email ID - 2 out of 81 clients selected for sample scrutiny

27.18.2. In reply to SCN-2, the Noticee submitted that the show-cause notice does not take into account that the difference in mobile numbers/ email ids was only on account of modification of KYC request received from the said clients. The Noticee provided the copies of the modification requests of the said two clients in support of its claim.

27.18.3. The Committee finds as under:

- a. The Noticee claimed that Exchange has not considered modified requests of change in mobile number and email ids.
- b. Upon verification of the documents submitted by the Noticee, it was observed as under:

Incorrect mobile number

- For client code APD04, the Noticee claimed that the modification was fraudulently done by Mr. Sunil Jain.

However, Noticee failed to provide modification request. Hence, the violation persists.

- For client code AAS03, the Noticee updated mobile number in July 2019 which is during inspection. Hence no violation persists.

Incorrect email ID

- For client code ADS04, the updated email as per modified request i.e. shahleena804@gmail.com is not matching with email id as per the Exchange record and Noticee's back-office i.e. shahleena808@gmail.com. Hence, the violation persists.
- For client code AVK07, the Noticee accepted violation and attributed the mismatch due to clerical error. Hence, the violation persists.

c. The Committee observes that after considering the submissions of the Noticee, the violation stands revised to 3 instances out of 4 instances.

d. As per Exchange Circular No. NSE/INVG/21841, dated October 04, 2012, and Exchange Circular No. NSE/INSP/32471 dated May 31, 2016, Trading Member are required to review the details of the clients uploaded on UCI Online pertaining to their mobile number and/or email address and update the same wherever necessary. Trading Members were directed to take utmost care while uploading client details, including mobile number and email address on UCI – ONLINE.

e. Thus, Noticee violated the regulatory provisions mentioned above by uploading incorrect email ID and mobile numbers in the UCI database.

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

27.19.1. Upon verification of the trial balance and loan ledgers as of February 28, 2022, it is observed that AVL, holding company of the Noticee,

repaid the loan to the Noticee amounting to Rs. 97.50 lakhs. The interest on inter-corporate deposit ("**ICD**") of Rs. 13.92 lakhs are still receivable. The Noticee extended the said loan to the related entity prior to the review period.

27.19.2. In reply to SCN-2, the Noticee submitted as under:

- a. Noticee had given an inter-corporate loan to its parent company, AVL, to the extent of Rs. 59 lakhs only. Giving a standalone loan to parent company does not amount to engaging in business other than securities. The Exchange has completely misinterpreted the Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957, ("**SCRR**") in this regard.
- b. The act of giving inter-corporate loan to its parent company does not constitute as a business activity. While the term "business" is not defined under the SCRR, reference may be made to judicial pronouncements in this regard. For instance, reference may be made to judgement of the Hon'ble Supreme Court of India in the case of Manipur Administration Vs. Nila Chandra Singh.
- c. There is only one instance of the Noticee giving a loan to its parent company. As such, the Noticee is not engaged in lending activity on regular basis.
- d. In any event, there is no 'personal financial liability' that is incurred by the Noticee. Although, the expression 'personal financial liability' has not been defined under the applicable law, it has generally been understood to refer to situations which create a monetary and financial responsibility as part of the business. There is no creation of a monetary and financial responsibility insofar as the business of stock broking is concerned. In the circumstance, Rule 8(3)(f) is not attracted in the present case.
- e. In any event, the loan has been substantially repaid by AVL to the Noticee in July 2020.

27.19.3. The Committee finds as under:

- a. The Noticee claimed that inter-corporate loan was given to its parent company, and it does not amount to engaging in business other than securities.
- b. The Committee notes that AVL was not SEBI registered entity. Hence extending loan to AVL, the Noticee involved in a business other than that of securities involving personal financial liability, which is in violation Rule 8(3)(f) of NSEIL Rules.
- c. The Noticee claimed that they have received this loan in July 2020. However, Noticee failed to provide documents in support of its claim.
- d. The Committee also notes that the Noticee had shortfall in net worth as of March 31, 2021, and September 30, 2021. Hence, extending the loan to AVL has eroded the net worth of the Noticee resulting in shortfall in net worth and personal financial liability.
- e. The Committee observes that as per Rule 8(3)(f) of SCRR, 1957, Trading Members are prohibited from engaging as a principal in a business other than securities. Further, as per SEBI Circular No. SMD/POLICY/CIR-6/97 dated May 7, 1997, borrowing and lending of funds, by a Trading Member, in connection with or incidental to or consequential upon the securities business, would not be disqualified under Rule 8(1)(f) and 8(3)(f).
- f. Thus, the Noticee violated the regulatory provisions mentioned above by engaging as a principal in a business other than that of securities involving personal financial liability.

CONCLUSION

28. The Committee finds as under:

- a. Total 22 complaints were filed against the Noticee alleging unauthorized trading and/or non-receipt of funds during the period November 2017 to September 2021. Out of which 4 complaints were filed in the month of August 2021, September 2021 and October 2021, by clients namely Blusea International, Mr. Manish Indukumar Shah, Manish Indukumar Shah HUF and, Ms. Nisha Jitendra Gupta claiming an amount of Rs. 4.31 crores. These complaints were placed before GRC of the Exchange in the month of November 2021. In the said matters, GRC accepted the claims of the complainants and admitted an amount of Rs. 2.17 crores in favour of the said clients. The details are as under:

| Sr. No | Date of GRC Order | Client Name | GRC admissible amount |
|--------------|-------------------|---------------------------|-----------------------|
| 1 | 10-Nov-21 | Blusea International | 1,54,24,446 |
| 2 | 24-Nov-21 | Manish Indukumar Shah HUF | 33,43,554 |
| 3 | 24-Nov-21 | Manish Indukumar Shah | 26,94,726 |
| 4 | 24-Nov-21 | Nisha Jitendra Gupta | 3,06,208 |
| Total | | | 2,17,68,934 |

- b. To safeguard the interest of the investors, Exchange circular No. NSE/ISC/46858 dated December 31, 2020, stipulates that:
- i. upon receipt of the GRC directions, for cases where the GRC has decided admissible claim in favour of the investor, the Exchange shall debit / block 100% of the amount decided as admissible by the GRC out of the deposit of the Member available with the Exchange or in case where the member authorizes the Exchange to utilize the deposit available with the clearing corporation, the deposits available with the clearing corporations shall be utilized. If on account of such debiting/blocking, the deposits of the Member falls below the requirement, the Members' ability to trade may get impacted.*
- ii. The Member has to inform the Exchange through a letter/e-mail id of the compliance officer/dedicated e-mail id, whether it intends to pursue the next level of resolution i.e. Arbitration, within 7 days from the date of receipt of the Grievance Redressal Committee ("GRC"). If no intimation is received within the 7 days, the amount decided as admissible by the GRC shall be released to the investor out of the amount debited / blocked from the Member's deposits available with the Exchange/Clearing Corporation*

- c. Despite several reminders to the Noticee via Exchange emails dated November 16, 2021, November 18, 2021, November 26, 2021, November 29, 2021, and December 01, 2021, the Noticee failed to deposit the amount admitted by the GRC. Accordingly, pursuant to the Exchange circular No. NSE/ISC/46858 dated December 31, 2020, the Exchange blocked an amount of Rs. 57.50 lakhs from the deposits available with the Exchange. As a result of blocking the said amount from the deposit, the Noticee's deposit fell below the requirement of the Exchange. Accordingly, the Exchange vide its email dated December 09, 2021, disabled the trading terminals of the Noticee with effect from December 10, 2021.
- d. Considering the investor complaints pertaining to unauthorized trades, the Exchange conducted a limited purpose inspection of the Noticee's books and records and issued show cause notice dated January 05, 2022. During the inspection, the Exchange observed various violations such as i) Funds of credit balance clients used to meet the settlement obligations of debit balance clients or own purposes to the extent of Rs. 1.49 crores, ii) Shortfall in net worth as of March 31, 2021, and September 30, 2021, wherein the networth was (-ve) Rs. 1.67 crores and (-ve) Rs. 1.48 crores, iii) Non-settlement of clients' funds and securities, iv) Non-reconciliation of securities, v) Improper maintenance of client ledgers, vi) Non-maintenance of appropriate evidence regarding the orders placed by the clients and, vii) Non-maintenance of clients' registration documents.
- e. The Exchange received 3 more investor complaints involving an amount of Rs. 0.47 lakhs alleging non-receipt/delay in funds/unauthorized trades. The Noticee has failed to deposit balance amount of Rs. 1.60 crores (Rs. 2.17 crores [Admissible amount] – Rs. 0.57 Crore [deposit]) towards admissibility of GRC claims. Hence, considering the sudden increase in number of investors' complaints against the Noticee pertaining to non-receipt / delay in funds / unauthorized trades and Noticee's inability to meet its obligation towards GRC orders and complaints, the Exchange invoked the SEBI SOP Circular on February 02, 2022.
- f. The said action of the Exchange was challenged by the Noticee before the Hon'ble Securities Appellate Tribunal. However, the Noticee has later withdrawn the appeal.
- g. In view of SEBI SOP Circular, the Exchange conducted a forensic audit of the books and accounts of the Noticee, and the Exchange issued another show cause Notice dated October 2022. During the inspection, the Exchange observed

the various violations such as i) Unauthorized trading in client accounts and non-maintenance of appropriate evidence in respect of orders placed by its clients, ii) Potential portfolio management scheme/potential guaranteed returns scheme run by the Noticee, iii) Improper maintenance of client ledgers, iv) Shortfall of clients' funds, iv) Non-settlement of clients' funds, v) Non-reconciliation of securities, vi) Pledging of securities of credit balance clients, vii) Member has not unpledged/disposed off client securities pledged with banks/NBFCs by August 31, 2019, viii) Non-maintenance of client registration documents containing all the prescribed mandatory documents ix) Shortfall in net worth x) Incorrect mobile numbers and email ids of the clients uploaded on the UCI database and xi) Engagement as a principal in a business other than securities involving personal financial liability.

- h. The Committee observes that, in accordance with the SEBI SOP Circular, the Exchange made efforts to settle the claims of the clients of the Noticee. This involved utilizing the deposits of the Noticee and settling the outstanding balances of the clients' based on the balances derived by the forensic auditor and / or balances confirmed by the clients out of the funds of the Noticee available with the Exchange. As a result, majority of the clients have been settled. The status of settlement of clients' funds and securities as of July 29, 2024, is as under:

Funds

| Sr. No. | Particulars | No. of clients | Amount (in lakhs) |
|----------------|---|-----------------------|--------------------------|
| 1 | Total clients paid as per forensic auditor or balance confirmation from clients or directly by TM | 871 | 226.48 |
| 2 | Funds Kept on hold for various reasons such as debit in account and incorrect bank details | 136 | 12.05 |
| 3 | Funds Kept on hold-In case of client Bluesea International | 1 | 1.08 |

Securities

Securities were transferred to 2 clients based on confirmation on demat details received. Further, the securities of 22 clients are kept on hold as these clients have either debit balance or securities payable to the Noticee or is a related party / demat details are not available.

- i. As mentioned in above paragraph No. 16 and No. 23 it is observed that the Noticee has been given several opportunities to settle the clients' funds and securities and deposit an amount etc. among the other direction. However, the Noticee has failed to adhere to the directions issued by the Committee from time to time.
- j. In the Committee meeting held on February 06, 2024, the Committee noted that the funds of the clients of the Noticee were either settled, or were available with the Exchange for settlement, barring the amount covered under GRC orders. Accordingly, the Committee decided to give an opportunity to the Noticee to file arbitration against the GRC orders subject to the deposit of an amount of Rs. 71.96 lakhs with the Exchange to the extent of the shortfall for the purpose of blocking the same against the GRC orders, excluding the membership deposits and/or other dues. The same was informed to the Noticee vide email dated March 26, 2024. However, the Noticee has failed to reply to the Exchange email and reminder dated April 25, 2024.
- k. Thereafter the Noticee had been given further opportunities of personal hearing on May 23, 2024, June 20, 2024, July 09, 2024, and July 29, 2024, However the Noticee had failed to reply to the Exchange emails and appear before the Committee.
- l. The Committee observed that the Noticee failed to demonstrate the availability of sufficient funds, and the Noticee failed to meet the obligations of its clients.
- m. The Noticee contended that the writ petition filed by the Noticee challenging SEBI SOP Circular is pending before the Hon'ble Hight Court and the matter is sub-judice. It is observed that though the Noticee has challenged the SEBI SOP circular before the Hon'ble Hight Court, no stay has been granted by the Hon'ble Hight Court on operation of the said circular and/or action taken by the Exchange under the said SEBI SOP circular.
- n. The Committee's primary focus during this period has been to safeguard the interest of the investors. By failing to pay the amount towards GRC orders and resolve investors complaints for a prolonged period, the Noticee failed to abide by the Code of Conduct specified under Regulations 4.5.1 and 4.5.2 of Exchange Regulations (CM and F&O Segments), and Rules 3(e) of Chapter IV of Exchange Rules which has inevitably culminated in the decision to declare the Noticee as defaulter. The extracts of the relevant Rules, Regulations, Bye-laws and Circulars violation by the Noticee are as under:

a) Chapter IV of Exchange Rules

“Disciplinary Jurisdiction

- (1) *The relevant authority may expel or suspend and/or fine under censure and/or warn and/or withdraw any of the membership rights of a trading member if it be guilty of contravention, non-compliance, disobedience, disregard or evasion of any of the Byelaws, Rules and Regulations of the Exchange or any resolutions, orders, notices, directions or decisions or rulings of the Exchange or the relevant authority or any other Committee or officer of the Exchange authorised in that behalf or of any conduct, proceeding or method of business which the relevant authority in its absolute discretion deems dishonourable, disgraceful or unbecoming a trading member of the Exchange or inconsistent with just and equitable principles of trade or detrimental to the interests, good name or welfare of the Exchange or prejudicial or subversive to its objects and purposes.*

Penalty for Misconduct, Unbusinesslike Conduct and Unprofessional Conduct

- (2) *In particular and without in any way limiting or prejudicing the generality of the provisions in Rule (1) above, a trading member shall be liable to expulsion or suspension or withdrawal of all or any of its membership rights and/or to payment of a fine and/or to be censured, reprimanded or warned for any misconduct, unbusinesslike conduct or unprofessional conduct in the sense of the provision in that behalf contained herein.*

Misconduct

- (3) *A trading member shall be deemed guilty of misconduct for any of the following or similar acts or omissions, namely:*
- (e) *Failure to comply with Resolutions: If it contravenes or refuses or fails to comply with or abide by any resolution, order, notice, direction, decision or ruling of the relevant authority or of any Committee or officer of the Exchange or other person authorized in that behalf under the Byelaws, Rules and Regulations of the Exchange.*

Suspension of Business:

(8) *The relevant authority may require a trading member to suspend its business in part or in whole:*

(c) *Unsatisfactory Financial Condition: When in the opinion of the relevant authority it is in such financial condition that it cannot be permitted to do business with safety to its creditors or the Exchange.”*

b) Byelaw 1(a) of Chapter XII of Exchange Byelaws

“Declaration of Default

(1) *A trading member may be declared a defaulter by direction/circular/notification of the relevant authority of the trading segment if –*

a) he is unable to fulfil his obligations

b) he admits or discloses his inability to fulfil or discharge his duties, obligations and liabilities; or”

c) Regulations 4.5.1 and 4.5.2 of Exchange Regulations (CM and F&O Segments)

“4.5 CODE OF CONDUCT FOR TRADING MEMBERS

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.

4.5.2 GENERAL PRINCIPLES

(a) Professionalism: A Trading Member in the conduct of his business, shall observe high standards of commercial honour of just and equitable principles of trade.

(b) Adherence to Trading Practices: Trading Members shall adhere to the Rules, Regulations and Byelaws of the Exchange and shall comply with such operational parameters, rulings, notices, guidelines and instructions of the relevant authority as may be applicable from time to time.

(c) Honesty and Fairness: In conducting his business activities, a Trading Member shall act honestly and fairly, in the best interests of his constituents.”

DECISION

29. Accordingly, Artha Vrddhi Securities Limited is expelled from the membership of the Exchange under Rules 1 and 2 of Chapter IV of NSEIL Rules and declared a defaulter under Byelaw 1(a) of Chapter XII of the NSEIL Byelaws and SEBI SOP Circular with immediate effect from the date of this order.

Sd/-
Mr. S Ravindran
Chairperson

Sd/-
Justice (Retd) Smt. Abhilasha Kumari
Committee Member

Sd/-
Mr. Essaji Vahavanti
Committee Member

Sd/-
Prof (Dr.) Mamata Biswal
Committee Member

Date: November 26, 2024