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BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AE/2020-21/9770]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, SECTION 19H OF DEPOSITORIES ACT, 1996 READ WITH RULE 5 OF DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005, AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005



In respect of

Acumen Capital Market (India) Limited
NSE, BSE, MSEI – INZ000170434
CDSL-IN-DP-680-2013
NSDL-IN-DP-40-2015
S. T. Reddiar & Sons Building,
Veekshanam Road,
Cochin – 682 035

In the matter of Acumen Capital Market (India) Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), the stock exchanges - BSE& NSE and Depositories – NSDL& CDSL conducted a

comprehensive inspection of Acumen Capital Market (India) Limited (hereinafter referred to as '**ACMIL / Noticee**') to examine its compliance with various regulatory norms prescribed by SEBI. The period of inspection was from April 2017 to December 2018 (hereinafter referred to as "**IP**").

2. Based on the findings of inspection, SEBI initiated adjudication proceedings against the Noticee under the provisions of Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), Section 19G of the Depositories Act, 1996 (hereinafter referred to as '**Depositories Act**'), and Section 23D of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "**SCRA**") for the alleged violations of the provisions of the below mentioned Acts, SEBI Regulations and Circulars:
 - a. Section 23D of SCRA
 - b. SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993
 - c. SEBI Circular No. MIRSD/SE/Cir-19/2009 dated December 03, 2009
 - d. SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
 - e. SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011
 - f. SEBI Circular No. CIR/DNPD/7/2011 dated August 10, 2011
 - g. SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018
 - h. SEBI Circular No. CIR/MIRSD/66/2016 dated July 21, 2016
 - i. SEBI Circular No. CIR/MIRSD/5/2012 dated April 13, 2012
 - j. SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011
 - k. SEBI Circular No. CIR/MRD/DP/01/2014 dated January 07, 2014

- I. SEBI Circular No. SEBI/HO/MRD/DP/CIR/P/2016/134 dated December 15, 2016
- m. Regulation 43 of SEBI (Depositories & Participants) Regulations, 1996

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide communiqué dated January 31, 2020 to conduct adjudication proceedings in the manner specified under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**SEBI Adjudication Rules**”), Rule 4 of Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as “**Depositories Adjudication Rules**”), and Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as “**SCR Adjudication Rules**”) for the above alleged violations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated March 12, 2020 (hereinafter referred to as ‘**SCN**’) was issued to the Noticee under Rule 4(1) of the SEBI Adjudication Rules, Rule 4(1) of the Depositories Adjudication Rules and Rule 4(1) of the SCRA Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee

under Section 15HB of the SEBI Act, Section 19D of the Depositories Act, and Section 23D of the SCRA for the violations alleged to have been committed by the Noticee.

5. The following violations were alleged in the SCN to have been committed by the Noticee:

Finding A: Non –Segregation of clients fund and Securities

- i. *Based on the principles and guidelines stipulated in clause 3 of SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, reconciliation of clients' funds lying with the Noticee was done with the total available funds, i.e., cash and cash equivalents with the stock broker and with the clearing corporation/ clearing member to detect any mis-utilization of the clients' funds. It was observed that, out of 57 sample days, the Noticee had misused client funds in 29 sample cases as the value of G, as specified in the above SEBI Circular dated September 26, 2016, is negative. It was observed that the extent of mis-utilisation of credit balance clients' funds to meet obligations of debit balance clients or own purposes ranged from Rs. 15.15 lakh to Rs. 5.93 crore in absolute terms and from 1.2% to 58.32% of the funds of credit balance clients in percentage terms.*
- ii. *It was further observed that, out of the 29 days where the Noticee had mis-utilized the funds of credit balance clients, client funds were misused for own purposes on 9 days as the value of H, as specified in the above SEBI Circular dated September 26, 2016, was positive on those days. However, there was no proprietary trading or proprietary obligation on these 9 days indicating that funds were used outside of the stock exchange / clearing corporation. The range of mis-utilization of credit balance clients' funds was from Rs. 8.07 lakh to Rs. 3.35 crore. Details of mis-utilization of credit balance clients' funds is as below:*

Table-1: Instances of mis-utilization of funds of credit balance clients for debit balance clients and for Noticee's own purpose

S. No.	Date	Total of end of the day balance in all Client Bank Accounts	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents*	Total Credit Balance of all clients (after adjusting for open bills and uncleared cheques)	DIFFERENCE (G)	Total debit balance (after adjusting for open bills and uncleared cheques)	Amount of funds of credit balance clients used for debit balance clients	Amount of fund used for own purpose (only if absolute value G is greater than debit balance clients)	Extent of misutilization of credit balance clients' funds as percentage of funds of credit balance clients (%)
		A	B	C	G=(A+ B)-C	D		H= IGI -IDI	
1	24-04-17	1,31,44,420	5,19,21,480	11,44,19,092	-4,93,53,191	3,84,10,498	3,84,10,498	1,09,42,693	43.13
2	03-05-17	56,28,928	4,19,21,480	11,55,16,373	-6,79,65,965	4,18,46,506	4,18,46,506	2,61,19,459	58.84
3	08-05-17	59,52,516	4,19,21,480	11,48,67,512	-6,69,93,516	4,63,23,362	4,63,23,362	2,06,70,154	58.32
4	19-05-17	1,46,07,180	4,19,21,480	13,53,15,493	-7,87,86,833	5,93,06,258	5,93,06,258	1,94,80,575	58.22
5	30-05-17	3,57,83,335	5,09,21,480	13,60,68,699	-4,93,63,884	3,49,39,891	3,49,39,891	1,44,23,993	36.28
6	07-06-17	42,78,330	4,59,21,480	11,08,60,930	-6,06,61,120	3,30,65,054	3,30,65,054	2,75,96,066	54.72
7	25-07-17	1,49,25,266	6,19,21,480	11,03,33,747	-3,34,87,000	3,81,61,689	3,34,87,000	-	30.35
8	27-07-17	40,41,603	5,89,00,000	11,50,14,408	-5,20,72,804	3,98,79,138	3,98,79,138	1,21,93,666	45.28
9	03-08-17	3,67,15,809	5,09,00,000	11,78,27,157	-3,02,11,348	2,94,03,720	2,94,03,720	8,07,627	25.64
10	12-09-17	3,73,82,051	11,29,21,480	15,57,08,701	-54,05,171	3,76,20,018	54,05,171	-	3.47
11	28-09-17	82,59,332	11,26,50,000	14,11,25,401	-2,02,16,068	5,52,78,927	2,02,16,068	-	14.32
12	25-10-17	77,49,009	11,90,21,480	14,80,90,901	-2,13,20,412	4,50,49,565	2,13,20,412	-	14.40
13	26-10-17	89,36,407	11,52,50,000	14,04,05,495	-1,62,19,087	4,05,91,049	1,62,19,087	-	11.55
14	08-11-17	36,64,983	11,52,50,000	15,88,02,536	-3,98,87,552	4,54,62,653	3,98,87,552	-	25.12
15	28-11-17	89,56,200	10,65,21,480	14,23,52,904	-2,68,75,224	4,94,59,703	2,68,75,224	-	18.88
16	30-11-17	3,23,46,650	10,27,50,000	13,67,50,904	-16,54,254	4,86,77,333	16,54,254	-	1.21
17	18-12-17	27,04,326	10,27,50,000	13,34,07,995	-2,79,53,668	4,86,40,006	2,79,53,668	-	20.95
18	02-01-18	1,21,72,173	10,65,21,480	15,08,84,211	-3,21,90,558	4,84,90,663	3,21,90,558	-	21.33
19	22-01-18	49,55,341	10,65,21,480	14,61,81,323	-3,47,04,502	6,25,06,567	3,47,04,502	-	23.74
20	23-01-18	69,73,063	10,27,50,000	13,84,23,260	-2,87,00,196	6,93,06,480	2,87,00,196	-	20.73
21	25-01-18	61,60,361	10,65,21,480	14,46,67,577	-3,19,85,736	4,88,60,085	3,19,85,736	-	22.11



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S. No.	Date	Total of end of the day balance in all Client Bank Accounts	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents*	Total Credit Balance of all clients (after adjusting for open bills and uncleared cheques)	DIFFERENCE (G)	Total debit balance (after adjusting for open bills and uncleared cheques)	Amount of funds of credit balance clients used for debit balance clients	Amount of fund used for own purpose (only if absolute value G is greater than debit balance clients)	Extent of misutilization of credit balance clients' funds as percentage of funds of credit balance clients (%)
22	01-02-18	1,09,41,089	10,38,75,000	14,56,70,203	-3,08,54,113	4,85,95,952	3,08,54,113	-	21.18
23	02-02-18	79,58,041	10,38,75,000	13,97,54,194	-2,79,21,152	5,57,06,009	2,79,21,152	-	19.98
24	06-02-18	94,70,233	10,38,75,000	13,27,98,657	-1,94,53,423	4,88,72,649	1,94,53,423	-	14.65
25	06-03-18	73,62,293	10,63,75,000	12,39,67,430	-1,02,30,137	4,62,73,005	1,02,30,137	-	8.25
26	17-04-18	61,95,452	10,89,08,746	12,22,68,333	-71,64,135	3,98,02,377	71,64,135	-	5.86
27	26-07-18	57,27,796	12,53,25,000	13,32,83,724	-22,30,928	2,30,73,142	22,30,928	-	1.67
28	12-09-18	68,16,649	5,82,51,198	14,23,23,911	-7,72,56,063	4,37,04,574	4,37,04,574	3,35,51,488	54.28
29	24-09-18	2,67,01,114	9,79,90,804	12,62,07,704	-15,15,786	3,73,84,485	15,15,786	-	1.20

It was also observed that out of the total sample of 57 days, the value of J, as calculated from the methodology given in SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, was positive on 4 days indicating the extent of clients' fund utilized towards margin obligation of debit balance clients and proprietary margin obligations to the extent of positive value of J. It was observed that the extent of mis-utilization of credit balance clients' funds to meet margin obligations of debit balance clients and proprietary trading on these days was to the tune of Rs. 9.13 lakh to Rs. 28.30 lakh in absolute terms and from 0.4% to 2.04% of funds of credit balance clients in percentage terms. Details of the said four instances of mis-utilisation of credit balance clients' funds to meet margin obligation of debit balance clients and proprietary trading are given below:

Table 2: Funds/ collaterals of Credit Balance Clients used for Margin Obligations of Debit Balance Clients and Proprietary Trading:



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Sl No	Date	Total of end of the day balance in all Client Bank Accounts (Rs.)	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents* (Rs.)	Total Credit Balance of all clients (after adjusting for open bills and uncleared cheques) (Rs.)	(Rs.)	Total debit balance (after adjusting for open bills and uncleared cheques) (Rs.)	Margin utilized for positions of Credit Balance Clients (all exchanges) (Rs.)	Free/unblocked Collateral deposited with clearing corporation/ clearing member (MF) (Rs.)	Cases where G is Negative (Rs.)	Cases where G is positive (Rs.)	% of Mis-utilisation with funds of credit balance clients
		A	B	C	G=(A+ B)-C	D	MC	MF	J=B-(MC+MF)	J=(C-A)-(MC+MF)	
1	04/05/2017	47,58,894	16,19,21,480	11,40,47,902	5,26,32,472	45,09,0,602	4,40,75,689	6,34,78,195	0	17,35,124	1.52%
2	23/01/2018	69,73,063	10,27,50,000	13,84,23,260	-2,87,00,196	6,93,06,480	7,70,89,900	2,28,29,697	28,30,402		2.04%
3	11/12/2018	58,24,822	29,48,40,378	22,28,13,515	8,78,51,684	2,98,39,864	7,93,36,084	12,67,39,498	9,13,110		0.4%
4	26/12/2018	1,27,17,367	30,63,84,516	22,66,83,625	9,24,18,258	3,73,22,694	9,59,48,186	11,52,76,895	27,41,175		1.21%

iii. In view of the above, it is alleged that the Noticee has used funds of credit balance clients for settlement/ margin obligations of debit balance clients and proprietary margin obligations of the Noticee and for purposes outside stock exchange or clearing corporation. In view of the same, it is alleged that the Noticee has violated the provisions of Section 23D of SCRA read with Clause 1 of Annexure of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

iv. The above mentioned observations in respect of mis-utilization of clients' funds resulting in alleged violations of relevant provisions of SCRA and SEBI Circulars by the Noticee as brought out above, if proved, makes the Noticee liable for monetary penalty under the provisions of Section 23D of the SCRA.

Finding B: Monthly/ quarterly settlement of fund & securities

v. It is observed that the Noticee has not settled funds of 2 client accounts (Clients IDs KBRC060, ABXX105) in 4 instances on quarterly basis as per preference given by clients. The total unsettled amount is Rs.12.31 lakh. The details of the said instances are given below:

Table-3: Non-settlement of funds

S. no	Quarter	Client Code	Client Name	Date of Settlement (T Day)-dd-mm-yyyy	Funds balance as per the client ledger (in Rs.)	Securities balance as per the client securities ledger (in Rs.)	Sum of Funds and securities balance	Obligation of client	Cash market turnover	Retention amount for T day for the purpose of settlement (Derivative obligation at 2.25%)	Amount to be settled	Value of Securities settled	Total amount not settled
1	April 2017 to June 2017	KBRC060	NITHIN VENU	30-Jun-17	682319.66	0	682319.66	0	0	579512	102807.41	0	102807.41
2	July 2017 to Sep 2017	KBRC060	NITHIN VENU	18-Sep-17	1869885.81	0	1869885.81	0	0	1383281	486604.94	0	486604.94
3	Oct 2018 to Dec 2018	KBRC060	NITHIN VENU	22-Oct-18	6988668.3	0	6988668.3	0	0	6514789	473879.36	0	473879.36
4	Jan 2018 to Mar 2018	ABXX105	PRATIK KUMAR GUPTA (HUF)	02-Jan-18	925062.24	0	925062.24	0	0	757618	167444.49	0	167444.49

It was also observed that the Noticee has not settled the accounts of inactive clients as below:

Table 4: Non-settlement of inactive clients

Quarters	Number of inactive clients not settled	Amount of non- settlement (in Rs.)
Apr 17 to Jun 17	2097	7,64,931.81
July 17 to Sept 17	2058	7,56,974.63
Oct 17 to Dec17	2165	8,25,190.16
Jan 18 to March 18	32	2,53,090.42
April 18 to June 18	55	2,44,587.55
July18 to Sept 18	62	2,44,956.47
Oct 18 to Dec 18	68	2,45,154.89

- vi. It is observed from above that the unsettled funds of inactive credit balance clients were in the range of Rs. 2.44 lakh to Rs.8.25 lakh within the above specified time. Further, the number of clients not settled during the above period ranged from 32 clients to 2,165 clients. Further, it was observed

settlements were not made to more than 2000 inactive clients during the first three quarters of the inspection period.

- vii. The above instances of non-settlement of client accounts, as brought out above, are not in compliance with the provisions of Clause 12 of Annexure of SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009. Therefore, it is alleged that the Noticee has violated the said provisions.

Finding C: Incorrect Reporting of Margin

- viii. It was observed that the Noticee has not correctly reported margin to exchange in F&O segment in 4 instances. The cumulative shortfall of 4 clients was to the tune of Rs. 73,44,432/-. Details pertaining to incorrect reporting of margin is placed below:

Table 5: Incorrect Reporting of Margin

Date	Client Code	Client Name	Total value of funds and securities available (Rs.)	Margin reported (Rs.)	Shortfall (Rs.)
20.08.2018	HEXXA20	Acumen Commodities	2,63,19,229.80	3,35,99,004.67	-72,79,775
18.09.2018	AHVR084	Chandra Mohan Reddy Dandu	8,96,897.233	9,27,447.30	-30,550
17.05.2017	HOXX066	Kumar Kuraganti Pavan	8,58,256.69	8,76,117	-17,860
17.05.2017	AHRK001	Ramesh Kumar Jain	59,80,038.41	59,96,285	-16,247

- ix. The above instances of short collection of margin as brought out above, are not in compliance with the provisions of SEBI Circular No. CIR/DNPD/7/2011 dated August 10, 2011. Therefore, it is alleged that the Noticee has violated the provisions of SEBI Circular No. CIR/DNPD/7/2011 dated August 10, 2011.

Finding D: Absence of call recording system of clients in all locations

- x. It was observed that, while the facility for recording of telephone calls were mandated from April 01, 2018 onwards, the Noticee has not completed implementation of the client order recording (voice recording) system till the joint inspection in December 2018. The Noticee in its letter dated February 14, 2019 has admitted that the telephone recording facility is implemented only in its head office and in ten branches. In the remaining branches, the Noticee has claimed that it is keeping visitors' book. However, the Noticee could not produce physical record of order details from the walk in investors during the inspection. In view of the said observation, it is alleged that the Noticee has violated the provisions of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.

Finding E: Details not collected for clients who have opted for F & O

- xi. It was observed that the Noticee had not collected income details in respect of 35 clients, who had opted for F&O trading and their running account authorization was also not dated. The details of the said 35 clients are as below:

Table 6: Details not collected for clients who have opted for F & O

S. No	Client Code	Client Name	PAN
1	HEXM115	SREENIVASAN K B	AQIPB8162C
2	HOXX924	SIMNA ISSAC DSILVA	ATAPD3747J
3	AUPM061	SASANK RATHOD RAMAVATH	CCCPR8660P
4	RSMM063	DEEPAK A MALWADIA	AMQPM8665B
5	TCXX712	DHANASEKARAN R	BRVPD5796B
6	HOXX986	ALFIYA ASHIM	BWAPA8868H
7	HEXM178	RAMESH MATTAYI	AQTPR7580B
8	HCXX336	MOHAMED FAZIL THONIKKADAVATH	BKSPT6595G
9	HCFC049	SHIBINA P	BBBPP4843B
10	ARXX142	SATYANARAYANA UPPALA V V	AANPU9580G
11	HEXM202	SUNIL P J	FUTPS3167Q
12	HOSK156	ARUN KUMAR B	CBCPB5512K
13	AVKV003	LAKKU RAMU	AIRPL1523G

14	KBCM148	NACHIKETHA KRISHNAMURTHY TAVARKERI	BGCPT6702P
15	T1X5013	RAJU MAHESWARI	AGKPM0758K
16	HEXM150	JIJO PALATHINKAL	ABBPP6209N
17	ARXX102	VEERAVENKATA SURESH KUMAR ADUSUMILLI	ACBPA0808R
18	HEXM154	MARY	EFWPM4692P
19	AHNK021	MADHUBABAU NADUMURI	AHHPN7661G
20	HOXX887	SUDHAKARAN AYYAPPAN VADYAT	ABNPV8988L
21	T1XX607	PADMANABHAN NARASIMMAN	DXCPP7300E
22	HEXM149	JACOB JOHN	ATKJ8189Q
23	RSSS20	KANTABEN NEMCHAND CHANDARIA	ABQPC2214H
24	AAPR050	PURUSHOTHAM GADE	AOIPG8405M
25	T1X5014	KARTHIKA SIVAKUMAR	IYFPS0284F
26	HOXX903	RAMESH KUMAR AGARWAL	AAJPA7723K
27	AASM016	TAMILARASAN SHOBANA	GIDPS7564C
28	HOXX1035	REJICE SAMSON	EKKPS4192H
29	HOSK117	ARAVIND KUDAMALOORSSERIL REGHUNATH	CEXP8196H
30	HCXX351	PADMINI KOCHUKOTTARAM	ANEPK1096M
31	ARXX109	RAVI TEJA PAGOLU	EBNPP4431A
32	HOXX941	BINU BABU	BOOPB6697B
33	ARXX113	SUDHAKAR JAKKA	ASEPS7034G
34	T1X5012	THIAGARAJAN RUBA	AHGPR1406A
35	HOXX939	MOHAMMED SHEMEER	GXZPS5049R

- xii. *In view of the above, it is alleged that the Noticee has violated the provisions of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011.*

Finding F: Delay in uploading client details in CKYC system

- xiii. *It was observed that, out of 92 individual sample clients verified during the inspection, delay was observed in uploading client details in CKYC systems in case of 55 clients. Further, the signing off report of BSE, duly signed by the Noticee also mentions the said observations. In view of the same, it is alleged that the Noticee has violated the provisions of SEBI Circular No. CIR/MIRSD/66/2016 dated July 21, 2016.*

- xiv. *The above mentioned observations in respect of monthly / quarterly settlement of funds and securities, incorrect reporting of margin, non-*

availability of call recording system, non-collection of relevant KYC documents and delay in upload of client details in CKYC system, as brought out above, resulting in alleged violations of relevant provisions of SEBI Circulars by the Noticee, if proved, makes the Noticee liable for monetary penalty under the provisions of Section 15HB of the SEBI Act

Finding G: DP Operations - Account opening and KRA

- xv. It was observed from account opening and KRA data that the Noticee had not reported correct details of the following;
- a. In 1 instance, KYC was kept on hold by KRA due to deviation in submitted documents by the Noticee to KRA for the CDSL BO ID: 16311
 - b. The Noticee has not uploaded the second account holder KYC details to KRA for the following CDSL Bo IDs: 10305, 10339 & 16267.
 - c. The Noticee has not dispatched Account Opening intimation letter details to new BOs from January 2018.
 - d. The Noticee has provided option for DIS to POA clients while opening new demat account. In case of CDSL BO IDs: 10227 & 12490, the BO had requested the Noticee to issue DIS book while opening the account. However, the Noticee did not issue the DIS book to above mentioned BOs.
 - e. The Noticee has not followed maker and checker concept properly and error occurred while opening the new demat account.
 - f. In case of NSDL client IDs 10609808 and 10617568, there was delay in uploading the KYC records on the systems of KRA.
 - g. In 33 cases, the Noticee has not uploaded the KYC details with CYKCR or uploaded KYC details with CKYCR not within the stipulated timeline.
- Details of the said instances are as below:

Sl. No.	CL. CODE	PAN No.	DP ID	Client Name	CKYC NO	DATE of CKYC	AGREEMENT DATE / ACTIVATION DATE	NUMBER OF DELAY IN UPLOAD OF CKYC
1	10602554	BHMPV9327F	IN300896	VASANTHA KUMARI P K	Not applicable	Not uploaded	24-May-18	Not applicable
2	10606316	AEAPP4550Q	IN300896	CUPPU BALAKRISHNAN PRABHAKAR	Not applicable	Not uploaded	30-Jan-18	Not applicable

3	10606871	BMQPS2046R	IN300896	SANTHOSH THRIVENI	Not applicable	Not uploaded	30-Jan-18	Not applicable
4	10607010	ATAPD3747J	IN300896	SIMNA ISSAC DSILVA	Not applicable	Not uploaded	30-Jan-18	Not applicable
5	10607526	AOWPK4441B	IN300896	RUBY KOSHY	Not applicable	Not uploaded	06-Feb-18	Not applicable
6	10607671	ABLPA3005H	IN300896	JEEVAN KUMAR AGARWAL	10023397716	22/02/2018 14:30:02	07-Feb-18	12
7	10608203	AXKPK2349D	IN300896	MRUTHYUNJAY V KORISHETTAR	10023397722	22/02/2018 14:30:02	15-Feb-18	4
8	10608810	BARPP8491E	IN300896	JILY JOY PATTILAKUZHYYIL	Not applicable	Not uploaded	23-Feb-18	Not applicable
9	10609533	CCCPR8660P	IN300896	SASANK RATHOD RAMAVATH	Not applicable	Not uploaded	09-Mar-18	Not applicable
10	10609808	ABZPR3991D	IN300896	RENGARAJAN A	Not applicable	Not uploaded	09-Mar-18	Not applicable
11	10609808	AUDPS5591H	IN300896	SASIKALA R	Not applicable	Not uploaded	09-Mar-18	Not applicable
12	10610097	AJKPA4997R	IN300896	SOBY ANTONY	Not applicable	Not uploaded	12-Apr-18	Not applicable
13	10610353	AMQPM8665B	IN300896	DEEPAK A MALWADIA	10035126982	17/04/2018 12:26:46	09-Apr-18	5
	10610353	ARIPM8674K	IN300896	CHE TAN A MALWADIA	10035127010	17/04/2018 12:26:46	09-Apr-18	5
14	10610968	BRVPD5796B	IN300896	DHANASEKARAN R	Not applicable	Not uploaded	18-Apr-18	Not applicable
15	10611231	ABNPV8988L	IN300896	SUDHAKARAN AYYAPPAN VADYAT	Not applicable	Not uploaded	24-Apr-18	Not applicable
	10611231	BOAPS0021J	IN300896	SNIYA SUDHAKAR	Not applicable	Not uploaded	24-Apr-18	Not applicable
	10611231	AFZPV9686H	IN300896	VALSALA S V	10036945723	30/04/2018 15:22:25	24-Apr-18	3
16	10611266	ABRPE1954H	IN300896	SHOME EAPEN	Not applicable	Not uploaded	02-May-18	Not applicable
17	10611602	AHQPY8207Q	IN300896	YOUNGALI VENKATESHWAR	Not applicable	Not uploaded	23-May-18	Not applicable
18	10611792	BWAPA8868H	IN300896	ALFIYA ASHIM	10041885191	30/05/2018 12:48:49	23-May-18	4
19	10612263	AQTPR7580B	IN300896	RAMESH MATTAYI	10046556220	27/06/2018 12:20:07	04-Jun-18	20
	10612693	AOEPS1450A	IN300896	SADASIVAN M P	10046552793	27/06/2018 11:55:46	20-Jun-18	4
	10612693	HGMPS9097G	IN300896	PUSHPA SADASIVAN	10046552794	27/06/2018 11:55:46	20-Jun-18	4
	10612923	BAIPS0871C	IN300896	SEENAMMA JIJI	Not applicable	Not uploaded	26-Jun-18	Not applicable
20	10613723	AKVPA9504G	IN300896	GEORGE ALEX	Not applicable	Not uploaded	27-Jul-18	Not applicable
21	10613774	BKSPT6595G	IN300896	MOHAMED FAZIL THONIKKADAVATH	Not applicable	Not uploaded	23-Jul-18	Not applicable
22	10613854	APTPN3902J	IN300896	NEELI SWAPNA	10091256725	06/12/2018 12:07:23	01-Aug-18	124
23	10613900	AJTPP4148C	IN300896	LALY PAUL	Not applicable	Not uploaded	27-Jul-18	Not applicable
	10613900	AFVPK1759A	IN300896	MAJO VICHATTU KURIAKOSE	Not applicable	Not uploaded	27-Jul-18	Not applicable
24	10615921	ABKPD2325C	IN300896	SWARGATHMADATHIL R DAYANANDA PRABHU	10089542258	29/11/2018 15:20:26	03-Oct-18	54
	10615921	AFTPP6035L	IN300896	SASIKALA PRABHU	Not applicable	Not uploaded	03-Oct-18	Not applicable

25	10615964	AFGPA9054D	IN300896	AKSHAY KIRTI AGARWAL	10089542191	29/11/2018 15:20:18	26-Sep-18	61
	10615964	ACKPA6346H	IN300896	KAUSHAL KUMARI AGARWAL	Not applicable	Not uploaded	26-Sep-18	Not applicable
26	10616406	AMNPM9971H	IN300896	MAHESH NANJUNDE GOWDA	Not applicable	Not uploaded	12-Oct-18	Not applicable
	10616406	AASPU6660L	IN300896	PRASANNA U	Not applicable	Not uploaded	12-Oct-18	Not applicable
27	10616957	BBBPP4843B	IN300896	SHIBINA P	10089542193	29/11/2018 15:20:18	19-Oct-18	38
28	10616981	AANPU9580G	IN300896	SATYANARAYANA UPPALA V V	Not applicable	Not uploaded	24-Oct-18	Not applicable
29	10616990	FUTPS3167Q	IN300896	SUNIL P J	Not applicable	Not uploaded	24-Oct-18	Not applicable
30	10617568	BHRPR6569N	IN300896	CHANDNI R	10089542225	29/11/2018 15:19:52	01-Nov-18	18
	10617568	ADKPM4094P	IN300896	ANITHA MOHAN	10091255141	06/12/2018 11:52:57	01-Nov-18	25
31	10617568	ABEPN4917C	IN300896	RADHAKRISHNAN NAIR M G	Not applicable	Not uploaded	01-Nov-18	Not applicable
32	10618350	AUQPD5299Q	IN300896	JENIFAR D SOUZA	10093101860	14/12/2018 15:21:43	20-Nov-18	14
33	10618384	ABEPN4917C	IN300896	RADHAKRISHNAN NAIR M G	Not applicable	Not uploaded	26-Nov-18	Not applicable

- h. The Noticee has not obtained balance sheet and share-holding pattern every year from non- individual clients.
- i. In case of bank details change for NSDL client ID 10144960, signature on request differed from the one captured in DPM.
- j. The Noticee is not obtaining family flag declaration where same mobile number and email ids are captured in different client accounts.
- k. The Noticee has not sent communication to clients where same mobile number or email ID is captured in more than five client account.
- l. The Noticee has not provided five KYC reconfirmation samples. Further, for two KYC reconfirmation sample, auditor certification are not provided.
- xvi. In view of the above, it is alleged that the Noticee has violated the provisions of SEBI Circular No. CIR/MIRSD/5/2012 dated April 13, 2012 and SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011

Finding H: Issuance and execution of DIS

- xvii. The following discrepancies were observed from details of issuance and execution of DIS:

- a) In 14 instances, there is delay in uploading the scanned image of executed DIS in Central Depository Accounting System (CDAS).
- b) In 8 cases, booklets were forwarded to branches and the branches subsequently hand delivered them to clients. However, the branches have not maintained record or register of hand delivery. Further, branches do not have access to verify client signature. The cases where there are no records of hand delivery of DIS booklets are as below:

S. No.	Client ID	DIS
1	10528318	20173406-10
2	10521623	20173581-85
3	10598827	20173646-50
4	10514056	20173666-70
5	10537881	20173791-95
6	10169199	20174116-20
7	10359127	20174401-05
8	1044186	20174756-60

- c) In cases of DIS issuance (clientID: DIS) 10541189:20173906-10 and 10617074:20180056-60, was hand delivered by DP officer (RM) to client. In issuance register, RM has signed instead of the client. Further, there are no records of hand delivery to the client.
- d) In case of DIS issuance (client ID: DIS) 10608096:20173571-75 and 10200092:20174231-35, DIS booklets were hand delivered to client, however, record of issuance was not added in issuance register.
- e) The Noticee was not blocking used slips in back office. Further, the Noticee was processing all clients DIS directly on eDPM other than own POA based transactions.
- xviii. The details of the above instances are given in signing off report of NSDL and CDSL. In view of the above, it is alleged that the Noticee has violated the provisions of SEBI Circular CIR/MRD/DP/01/2014 dated January 07, 2014 and SEBI Master Circular No. SEBI/HO/MRD/DP/CIR/P/2016/134

dated December 15, 2016 regarding guidelines for delivery instruction slips issuance and processing [point no. 1.10 (Monitoring of DIS, point no. iv)].

Finding I: Non dispatch of transaction statement

xix. It was observed that the Noticee has not dispatched the transaction statement to BOs on monthly basis from January 2018. The said observation is highlighted in the signing off report of CDSL and the same has been signed by the compliance officer of the Noticee. In view of the same, it is alleged that the Noticee has violated the provisions of Regulation 43 of the SEBI (Depositories & Participants) Regulations, 1996. The text of the said provision is given below:

Statement of accounts.

43. Every participant shall provide statements of account to the beneficial owner in such form and in such manner and at such time as provided in the agreement with the beneficial owner.

xx. The above mentioned observations in respect of account opening & KRA, incorrect reporting of margin, issuance & execution of DIS and non despatch of transaction statements, as brought out above, resulting in alleged violations of relevant provisions of SEBI Circulars by the Noticee, if proved, makes the Noticee liable for monetary penalty under the provisions of Section 19G of Depositories Act.

6. The Noticee submitted its reply to the SCN vide letter dated July 13, 2020, and the main contentions made therein are summarized as below –

Observations	TM Reply
Finding A : Non Segregation of Clients funds and securities	Regarding the above please take note as under:

	<p>1) We had taken every effort to comply with the circular, in as much as we had even arranged for overdraft facility from banks and financial institutions to take care of shortfall in margin and settlement obligation to exchanges due to delay in receipt of dues in that regard from certain clients.</p> <p>2) From the weekly reports furnished we had complied with the requirement.</p> <p>3) However we concede slippage on certain dates observed by you; but wish to state that the number of instances is not 29, but only 15, if you consider the fund available for drawal in the overdraft account too. The details is attached as <u>Annexure I</u></p> <p><u>Table 1B:</u></p> <p>1) It cannot be denied that we had taken necessary steps to comply with the SEBI circular in this regard, in as much as that during the whole period selected for which inspection was carried out there had only be 4 instances.</p> <p>2) We assure that we have no intention what so ever to utilise client funds for other purposes. In fact to ensure prompt payment to clients we had even taken OD facility from banks and financial institutions to avoid instances of funds.</p> <p>3) In spite of our best and honest attempt to comply with the circular, the instances pointed out by you had occurred; which is not at all intentional or with any motive</p>
<p>Finding B : Monthly/Quarterly settlement of funds and securities</p>	<p><u>Refer Table 3 :</u> Though 4 instances have been noticed 1 instances to relates to only one client that is Nithin Venu (Client code :KBRC060). In any case none of the four instances reported as violation was with any intention to defy the provisions of law. It has happened because of a system error. Based on the observation we have now introduced a system whereby such instances of error were brought light so that the quarterly settlement is properly done. We feel apologetic for the mistake and plead our innocence.</p> <p><u>Inactive Accounts - Table 4:</u> As observed by the inspection team, we had taken all steps to bring down the inactive clients from as high of 2165 in December 2017 to as low as 32 clients in the quarter ended on 31st march 2018. The delay had been mainly due to the continued positive indications by the client to restart trading. But as we understood the import and</p>

	<p><i>seriousness of the circular we decided to settle all of them. However there had been instances where the funds transferred by NEFT were returned. Such instances aggregate to 13 (involving Rs. 78515/-), proof whereof is enclosed as Annexure II.</i></p> <p><i>We also hereby confirm that since the completion of inspection we have settled 31 inactive clients having balance of Rs.125106/-. Proof attached as Annexure III.</i></p> <p><i>For the remaining 24 clients the value aggregates to Rs. 41,353/- only for which we have issued cheques in previous years and neither the cheques got cleared nor it returned to us. Thus it became stale cheque and later while doing the bank reconciliation, we have reversed the entries.</i></p>
<p>Finding C : <i>Incorrect Reporting of Margin</i></p>	<p>Out of the four instances observed by you, please take note as under:</p> <p style="text-align: center;">a) <u>shortfall of Rs. 72.79.775 relating to HEXXA20;</u></p> <ol style="list-style-type: none"> 1) <i>The above shortfall is due to the fact that you had considered total value of fund and securities available as Rs. 2,63, 19,229.80, as against reported margin of Rs. 3,35,99,004.67</i> 2) <i>Rs.2,63,19,229.80 considered by you in determining available value of funds and securities does not comprise the value of Rs.3106192.30/- securities (after hair cut on the basis of var margin) available in the name of Acumen Commodities (India) Limited in CDSL. Details is attached as Annexure IV</i> 3) <i>A point to be noted in this context is that Acumen Commodities (India) Limited is controlled by Santhosh Kumar Agarwal Group. This is because the combined shareholding of Mr. Santhosh Kumar Agarwal, his sons (Akshay Agarwal and Akhilesh Agarwal) and their respective spouses (Chanchal Agarwal and Rekha Agarwal) in the company is 60%.</i> 4) <i>The value of securities held by the members of the controlling group as stated in point no: 3 above in NSDL in</i>

	<p>their respective demat accounts aggregates to more than 70 lakhs as detailed below:</p> <p>a) Santosh Kumar Agarwal - more than 51 lakhs- attached as Annexure V.A.</p> <p>b) Akshay Agarwal - more than 8 lakhs attached as Annexure V.B.</p> <p>c) Akhilesh Agarwal - more than 11 lakhs attached as Annexure V.C.</p> <p>5) The sons of Santosh Kumar Agarwal and their respective spouses had submitted necessary undertaking as required by the exchanges and are classified as part of dominant group (See copy of the Annexure C-5 is enclosed as Annexure VI.</p> <p>6) Even if the value of the securities held by the promoter shareholder alone is considered there is more than sufficient value of securities available.</p> <p>7) Further we are also enclosing specific authorisation /consent obtained from them in this regards as Annexure VII</p>
<p>Finding D : Absence of call recording system of clients in all locations</p>	<p>With respects to voice recording system, please note that we have implemented the voice recording facility in all our branches. We have seen few demos and no software is having complete reconciliation system to check the accuracy .However we are in the process of implementing the same in all our locations soon</p>
<p>Finding E : Details not collected for clients who have opted for F & O</p> <p>Finding F : Delay in uploading client details in CKYC system</p>	<p>Table 6: Out of the 35 client as listed in Table 6 with regards to not collecting the income proof for the clients who have opted for F & O, please note that we have collected the income proof from 18 clients is attached as Annexure VIII. The remaining 17 clients are inactive and have deactivated their trading account in our back office.</p> <p>The delay occurred due to software upgradation and version change, in which CKYC uploading facility is not automated. We have done the same manually, hence the delay occurred. Now have started to upload the details within the prescribed time limit</p>

<p>Finding G : DP Operations : Account opening and KRA</p>	<p>Table 7 : We have uploaded all the 33 client details in CKYC as shown in Table 7. Detail is attached for your reference as Annexure IX. However the delay occurred due to software up gradation and version change</p>
<p>Finding H : Issuance and execution of DIS</p>	<p>Table 8: no records of hand delivery of DIS booklet is maintained for 8 clients.</p> <p><i>In this regards please note that we have done the hand delivery through our employees only, Hence we have omitted to keep a record for the same. But as instructed by you during inspection, we have completely stopped the hand delivery system. Now we are sending the DIS only to the client's residential addresses based on their request in this regard</i></p>
<p>Finding I 1. Non- Dispatch of Transaction statements</p>	<p><i>In this regard please note that as NSDL is sending the transaction statements directly to the clients, we were under genuine impression that CDSL is also directly sending the transaction statement to the clients from their end. We apologise for the mistake from our part. But we used to send the statements to clients who are requesting for the same.</i></p> <p><i>However we have started sending the statements from January 2019 onwards through post. Please note that from July 2019 onwards the same is automated and we will be sending the statements to the registered e-mail ID of client concerned and will keep a log file as proof of delivery.</i></p>

7. Subsequently, the Noticee was granted an opportunity of personal hearing on September 01, 2020. In view of the pandemic situation, the said hearing was conducted through video conferencing on the webex platform. The following authorized representatives viz. Mr. P V Hariharan, FCA, Mr. Gireesh K S, Chief Operating Officer of Acumen, Ms. Deepthi Mohan, Chief Financial Officer of Acumen, and Ms. Rosy Shibi V M, Compliance Officer of Acumen, appeared on behalf of the Noticee and reiterated the submissions made by the Noticee in its reply dated July 13, 2020 and requested for time to make post hearing

submissions. Accordingly, the Noticee was granted time till September 07, 2020 for the same. Vide letter dated September 07, 2020, the Noticee made additional submissions in the matter, and the main contentions made therein are reproduced hereunder –

“At the outset we thank you for the opportunity given to us for a personal hearing in the subject matter. We also thank you for your kind gesture in granting us time till 7th September to make additional submissions and to furnish the proof of the documents relied on by us in framing our replies, but omitted by us either to submit or to make reference of the same in our reply cited above.

While on this we wish to make the following additional submission with reference to:

1) "Finding A"- concerning Non- Segregation of client Funds and securities.

TM Reply :

As regards a few instances (where the cash balances in bank accounts have been less than the total of all credit balances in client accounts) enlisted in your letter cited above, we pleaded that since we have arranged for overdraft facilities with banks, by pledging the companies own assets like properties and investments a lenient view may kindly be taken to consider the drawable balance in the said overdraft facility too and pardon us for the technical default in this regard.

Kindly take note in this context that we had not received any complaint from any client regarding any sort of payout delay. We follow the mode of NEFT payment for the last several years. In fact, for the last two years we have been issuing twice a day. Further, if any client requests for urgent payout, we make/ the same too with immediate effect without fail.

All these were possible only because of the fact that we had made alternate arrangements by way of facility in the form of bank overdraft to pay off the client creditors. It is hence, we request and reiterate that the drawable balance in the OD facility should also be considered for the purpose. In fact, the drawable balance in OD facility was sufficient enough (if not more) on

many days to meet the deficit remaining after adjustment of balances in client bank accounts and other collaterals. The **statement enclosed** clearly demarcating instances of availability of sufficient funds to meet the amount dues to clients stand testimony to our above submission. No doubt, we concede that there were still 15 instances of deficiency. Even with respect to these instances the magnitude is not as alarming as projected in the statement furnished by you. In order to identify this, we have marked those instances where sufficient funds were available in blue colour and others in peach and pink colour. In view of our above submission we request you to kindly take a lenient view in this matter. **See Annexure I**

Other than what is stated above, vide this letter, we are referring only to those of our replies furnished in our letter cited as (2) above, wherein we placed reliance on certain circulars/notification which were either omitted to be enclosed by us, or references whereof were omitted to be made by us, in the said letter. They are:

2) **"Finding-C" Concerning incorrect reporting of Margin :**

Regarding the shortfall of Rs. 72,79,775 relating to HEXXA20, we had submitted that

- i) DP holding statement of Acumen Commodities (India) Limited in CDSL evidencing value of securities (after hair cut on the basis of var margin) amounting in total to Rs.3106192.30/- is not taken into consideration. The said statement already enclosed to our above cited letter dated 13th July 2020 is once again enclosed and marked as Annexure II with a request to consider the same too.
- ii) Relying on the circular no: NSE/INSP/38154 dated 27th June 2018 issued by NSE (please refer to **Annexure III** thereto) based on the circular No : SEBI/HO/MRD/DRMNP/CIR/P/2018/75 May 02, 2018 issued by SEBI (please refer to **Annexure IV** thereto), we had, for the purpose of computation of margin requirement of Acumen Commodities India Limited, considered the combined DP holding of Mr. Santhosh Kumar Agarwal, his sons (Akshay Agarwal and Akhilesh Agarwal) and their respective spouses (Chantal Agarwal and Rekha Agarwal), as they, (whose combined shareholding in the company being 60%) fall in the category of promoters, their spouse, dependent children and parents having controlling shareholding in the company. In proof of our submission as above we are enclosing:

- the holding statement of Santhosh Kumar Agarwal, his sons Akshay Agarwal and Akhilesh Agarwal duly certified by chartered account for your reference as **Annexure V (a), V (b) and V (c)** together with their consent.
- Further we are attaching the holding statement of Acumen commodities (India) Limited, Santhosh Kumar Agarwal, his sons Akshay Agarwal and Akhilesh Agarwal on the basis of the closing price of 17.08.2018 duly certified by chartered account for your reference as **Annexure VI (a), VI (b), VI (c) and VI (d)**,
- SEBI Circular SEBI/HO/MRD/DRMNP/CIR/P/2018/75 May 02, 2018 referred to above as **Annexure IV**
- Circular no: NSE/INSP/38154 dated 27th June 2018 issued by NSE referred to above as **Annexure III**

and invite your kind attention to the statement against the 5th bullet point under the answer to the question in serial number 12 of the above referred circular issued by NSE. Serial No.12 describes **"What are the related entities for a client, whose balances/securities can be considered for collection and reporting margin?"**

The answer to the above is **"Margin collected/available with the member in approved form, from entities related to the client as mentioned below and certified by an independent Chartered Accountant with specific authorization/consent"** and the 5th bullet point underneath the above reads as

"In case of Corporates, the promoters having controlling shareholdings, their spouse, dependent children and parents"

The above referred circulars- i.e., the one issued by SEBI and the other issued by NSE are enclosed as Annexure **III** and **IV** for your easy reference and kind consideration.

3) "Finding D" concerning absence of call recording system of clients in all locations

In addition to our submissions in or reply dated 13/07/2020 we wish to make the following additional submission. We have taken effort to convert the clients to online trading and presently almost 65% of our clients are trading through mobile or online platform only."

4) "Finding E" concerning details not collected for clients who have opted for F&O

*As regards income proof we have relied on Annexure-3 of SEBI circular CIR/MIRSD/16/2011 August 22, 2011 dealing with Simplification and Rationalization of Trading Account Opening Process". In Annexure-3 referred to above your kind attention is invited to the table against serial number 1 given below "INSTRUCTIONS/ CHECK LIST" appearing in the last page thereof. For your ready reference we are enclosing the same as **Annexure VII**. As can be seen therein what is given in the last page of Annexure-3 is an instructive list of additional documents to be collected. It is not mandated therein that all documents listed therein should be collected nor that ITR Acknowledgment or salary slip, or copy of Form 16 should be collected in all cases. Hence, we sought clarification from the exchange in that regard; and we were advised that any one of the documents listed therein may be sufficient. Thus, Demat statement/ bank statement being the documents enlisted therein, we collected the same. In view of this we request you to kindly treat as compliant in this regard and drop the charge against us.*

*After the hearing on 1st September 2020, we have once again contacted and obtained additional proofs from a few clients as shown under the caption "New Submissions" in the table given below as **Annexure VIII**. Out of the 18 clients as earlier stated in our letter, we have reactivated one more client i.e HEXM150 (see serial number-12 in the table below) during the month of July 2020. As the 7 clients mentioned from sl.no 13 to 19 in the table below are inactive in FY 20-21, we have deactivated the clients from further trading.*

5) "Finding F" concerning delay in uploading client details in CKYC system :

Please note that we have taken note of your observation and as already informed in our earlier letter dated 13th July 2020 at the initial stages due to software changes the process of uploading the CKYC were not automated, we have done the same manually. Hence the delay occurred. We request you to pardon us in this regard. As the system is automated now, we are uploading CKYC within the prescribed time limit given by SEBI. Hence please take a lenient of the minor lapse in this regard.

6) **"Finding G" concerning DP Operations : Account opening and KRA**

It is true that we have omitted to upload the 33 client codes in the CKYC portal as observed by the inspection team. Based on the observation, we uploaded the entire 33 cases in CKYC portal. Also kindly take note that now we have implemented a strict maker checker system to avoid recurrence of such lapses in future. We request you to consider our request to drop the charge in this regard.

7) **"Finding H" concerning Issuance and execution of PIS**

We have taken note of your observation and have completely stopped issuing DIS by "hand delivery ". Presently we are issuing the DIS based only on client requests and are sending the same to the registered address only of the clients through courier/ registered post and are also keeping a record for the same for reference. "

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee, its replies and the documents / material available on record. The issues that arise for consideration in the present case are :

(a) Whether the Noticee has violated the following Acts, SEBI Regulations and SEBI Circulars:

- a) Section 23D of SCRA
- b) SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993
- c) SEBI Circular No. MIRSD/SE/Cir-19/2009 dated December 03, 2009
- d) SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
- e) SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011
- f) SEBI Circular No. CIR/DNPD/7/2011 dated August 10, 2011
- g) SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018
- h) SEBI Circular No. CIR/MIRSD/66/2016 dated July 21, 2016

- i) SEBI Circular No. CIR/MIRSD/5/2012 dated April 13,2012
 - j) SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011
 - k) SEBI Circular No. CIR/MRD/DP/01/2014 dated January 07, 2014
 - l) SEBI Circular No. SEBI/HO/MRD/DP/CIR/P/2016/134 dated December 15, 2016
 - m) Regulation 43 of SEBI (Depositories& Participants) Regulations, 1996
- (b) Do the violations, if any, attract monetary penalty under Section 15HB of the SEBI Act, Section 19G of the Depositories Act, and Section 23D of the SCRA?
- (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, Section 19-I of the Depositories Act, and Section 23J of the SCRA?

A: Non-Segregation of client fund and securities

a) Misuse of Clients Funds

9. The first allegation against the Noticee was that, out of 57 sample days taken during inspection, the Noticee had misused the funds of balance clients on 29 days as the value of 'G', as specified in the SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, was found to be negative on the said dates as below:

Table-1: Instances of mis-utilization of funds of credit balance clients for debit balance clients and for Noticee's own purpose

S. No.	Date	Total of end of the day balance in all Client Bank Accounts (Rs.)	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents* (Rs.)	Total Credit Balance of all clients (after adjusting for open bills and uncleared cheques) (Rs.)	DIFFERENCE (G) (Rs.)	Total debit balance (after adjusting for open bills and uncleared cheques) (Rs.)	Amount of funds of credit balance clients used for debit balance clients (Rs.)	Amount of fund used for own purpose (only if absolute value G is greater than debit balance clients) (Rs.)	Extent of misutilisation of credit balance clients' funds as percentage of funds of credit balance clients (%)
		A	B	C	G=(A+ B)-C	D		H= IGI –IDI	
1	24-04-17	1,31,44,420	5,19,21,480	11,44,19,092	-4,93,53,191	3,84,10,498	3,84,10,498	1,09,42,693	43.13
2	03-05-17	56,28,928	4,19,21,480	11,55,16,373	-6,79,65,965	4,18,46,506	4,18,46,506	2,61,19,459	58.84
3	08-05-17	59,52,516	4,19,21,480	11,48,67,512	-6,69,93,516	4,63,23,362	4,63,23,362	2,06,70,154	58.32
4	19-05-17	1,46,07,180	4,19,21,480	13,53,15,493	-7,87,86,833	5,93,06,258	5,93,06,258	1,94,80,575	58.22
5	30-05-17	3,57,83,335	5,09,21,480	13,60,68,699	-4,93,63,884	3,49,39,891	3,49,39,891	1,44,23,993	36.28
6	07-06-17	42,78,330	4,59,21,480	11,08,60,930	-6,06,61,120	3,30,65,054	3,30,65,054	2,75,96,066	54.72
7	25-07-17	1,49,25,266	6,19,21,480	11,03,33,747	-3,34,87,000	3,81,61,689	3,34,87,000	-	30.35
8	27-07-17	40,41,603	5,89,00,000	11,50,14,408	-5,20,72,804	3,98,79,138	3,98,79,138	1,21,93,666	45.28
9	03-08-17	3,67,15,809	5,09,00,000	11,78,27,157	-3,02,11,348	2,94,03,720	2,94,03,720	8,07,627	25.64
10	12-09-17	3,73,82,051	11,29,21,480	15,57,08,701	-54,05,171	3,76,20,018	54,05,171	-	3.47
11	28-09-17	82,59,332	11,26,50,000	14,11,25,401	-2,02,16,068	5,52,78,927	2,02,16,068	-	14.32
12	25-10-17	77,49,009	11,90,21,480	14,80,90,901	-2,13,20,412	4,50,49,565	2,13,20,412	-	14.40
13	26-10-17	89,36,407	11,52,50,000	14,04,05,495	-1,62,19,087	4,05,91,049	1,62,19,087	-	11.55
14	08-11-17	36,64,983	11,52,50,000	15,88,02,536	-3,98,87,552	4,54,62,653	3,98,87,552	-	25.12
15	28-11-17	89,56,200	10,65,21,480	14,23,52,904	-2,68,75,224	4,94,59,703	2,68,75,224	-	18.88
16	30-11-17	3,23,46,650	10,27,50,000	13,67,50,904	-16,54,254	4,86,77,333	16,54,254	-	1.21
17	18-12-17	27,04,326	10,27,50,000	13,34,07,995	-2,79,53,668	4,86,40,006	2,79,53,668	-	20.95
18	02-01-18	1,21,72,173	10,65,21,480	15,08,84,211	-3,21,90,558	4,84,90,663	3,21,90,558	-	21.33
19	22-01-18	49,55,341	10,65,21,480	14,61,81,323	-3,47,04,502	6,25,06,567	3,47,04,502	-	23.74
20	23-01-18	69,73,063	10,27,50,000	13,84,23,260	-2,87,00,196	6,93,06,480	2,87,00,196	-	20.73
21	25-01-18	61,60,361	10,65,21,480	14,46,67,577	-3,19,85,736	4,88,60,085	3,19,85,736	-	22.11
22	01-02-18	1,09,41,089	10,38,75,000	14,56,70,203	-3,08,54,113	4,85,95,952	3,08,54,113	-	21.18
23	02-02-18	79,58,041	10,38,75,000	13,97,54,194	-2,79,21,152	5,57,06,009	2,79,21,152	-	19.98
24	06-02-18	94,70,233	10,38,75,000	13,27,98,657	-1,94,53,423	4,88,72,649	1,94,53,423	-	14.65
25	06-03-18	73,62,293	10,63,75,000	12,39,67,430	-1,02,30,137	4,62,73,005	1,02,30,137	-	8.25
26	17-04-18	61,95,452	10,89,08,746	12,22,68,333	-71,64,135	3,98,02,377	71,64,135	-	5.86
27	26-07-18	57,27,796	12,53,25,000	13,32,83,724	-22,30,928	2,30,73,142	22,30,928	-	1.67
28	12-09-18	68,16,649	5,82,51,198	14,23,23,911	-7,72,56,063	4,37,04,574	4,37,04,574	3,35,51,488	54.28
29	24-09-18	2,67,01,114	9,79,90,804	12,62,07,704	-15,15,786	3,73,84,485	15,15,786	-	1.20

10. It is observed from the above analysis that the extent of mis-utilization of the credit client's fund to meet obligations of debit balance clients or own purposes ranged from Rs. 15.15 lakh to Rs. 5.93 crore in absolute terms and from 1.2% to 58.32% of the funds of credit balance clients in percentage terms. It was further observed that, out of the 29 days where the Noticee had mis-utilized the funds of credit balance clients, client funds were misused for own purposes on 9 days as the value of H, as specified in the above SEBI Circular dated September 26, 2016, was positive on those days. However, there was no proprietary trading or proprietary obligation on these 9 days indicating that funds were used outside of the stock exchange / clearing corporation. The range of mis-utilization of credit balance clients' funds was from Rs. 8.07 lakh to Rs. 3.35 crore.

11. It was further observed that out of the total sample of 57 days, the value of J, as calculated from the methodology given in the aforesaid SEBI dated September 26, 2016, was positive on 4 days indicating the extent of clients' fund utilized towards margin obligation of debit balance clients and proprietary margin obligations to the extent of positive value of J. It was observed that the extent of mis –utilization of credit balance clients' funds to meet margin obligations of debit balance clients and proprietary trading on these days was to the tune of Rs. 9.13 lakh to Rs. 28.30 lakh in absolute terms and from 0.4% to 2.04% of funds of credit balance clients in percentage terms. Details of the said four instances of mis-utilisation of credit balance clients' funds to meet

margin obligation of debit balance clients and proprietary trading are given below:

Table 2: Funds/ collaterals of Credit Balance Clients used for Margin Obligations of Debit Balance Clients and Proprietary Trading:

Sl No	Date	Total of end of the day balance in all Client Bank Accounts (Rs.)	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents* (Rs.)	Total Credit Balance of all clients (after adjusting for open bills and uncleared cheques) (Rs.)	(in Rs.)	Total debit balance (after adjusting for open bills and uncleared cheques) (Rs.)	Margin utilized for positions of Credit Balance Clients (all exchanges) (Rs.)	Free/unblock ed Collateral deposited with clearing corporation/ clearing member (MF) (Rs.)	Cases where G is Negative (Rs.)	Cases where G is positive (Rs.)	% of Mis-utilisation with funds of credit balance clients
		A	B	C	G=(A+ B)-C	D	MC	MF	J=B-(MC+MF)	J=(C-A)-(MC+MF)	
1	04/05/2017	47,58,894	16,19,21,480	11,40,47,902	5,26,32,472	45,09,0,602	4,40,75,689	6,34,78,195	0	17,35,124	1.52%
2	23/01/2018	69,73,063	10,27,50,000	13,84,23,260	-2,87,00,196	6,93,06,480	7,70,89,900	2,28,29,697	28,30,402		2.04%
3	11/12/2018	58,24,822	29,48,40,378	22,28,13,515	8,78,51,684	2,98,39,864	7,93,36,084	12,67,39,498	9,13,110		0.4%
4	26/12/2018	1,27,17,367	30,63,84,516	22,66,83,625	9,24,18,258	3,73,22,694	9,59,48,186	11,52,76,895	27,41,175		1.21%

12. In view of the above, it was alleged that the Noticee has used funds of credit balance clients for settlement/ margin obligations of debit balance clients and proprietary margin obligations of the Noticee and for purposes outside stock exchange or clearing corporation. In view of the same, it was alleged that the Noticee has violated the provisions of Section 23D of SCRA read with Clause 1 of Annexure of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

13. In this regard, the Noticee in its reply to the SCN has contended that it concedes slippage on certain dates, however the misutilization occurred on only on 15 instances, because for other days funds were available for withdrawal from overdraft account. The Noticee has further contended that in

order to make prompt payment to clients it had made alternate arrangements by way of facility in the form of bank overdraft and requested that the drawable balance in the OD facility should also be considered. In this regard, I note that as per the provisions of Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, the value of the overdraft account cannot be considered. Thus, I find no merit in the aforesaid submission of the Noticee. The Noticee has also submitted that it has not received any complaint from clients regarding payout delay. However, I note that the same does not absolve the Noticee from compliance with the provisions mandated in the aforesaid SEBI circular dated September 26, 2016. In view of the above, I conclude that the Noticee has violated the provisions of has violated the provisions of Section 23D of SCRA read with Clause 1 of Annexure of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

14. Further, in view of the conclusion arrived at the aforesaid paragraph in respect of Non segregation of client funds by the Noticee, I further conclude that the Noticee is liable for monetary penalty under Section 23D of SCRA, 1956 which reads as under:

Section 23D of SCRA

Penalty for failure to segregate securities or moneys of client or clients

23D. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate

securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Finding B: Monthly/ quarterly settlement of fund & securities

15. Further, the allegation against the Noticee is that it had not settled running accounts of client's funds and securities on quarterly/monthly basis. It is observed that the Noticee has not settled funds of 2 client accounts (Clients IDs KBRC060, ABXX105) in 4 instances on quarterly basis as per preference given by clients. The total unsettled amount is Rs.12.31 lakh. The details are given below –

Table-3: Non-settlement of funds

S. no	Quarter	Client Code	Client Name	Date of Settlement (T Day)-dd-mmm-yyyy	Funds balance as per the client ledger (in Rs.)	Securities balance as per the client securities ledger (in Rs.)	Sum of Funds and securities balance (Rs.)	Obligation of client	Cash market turnover	Retention amount for T day for the purpose of settlement (Derivative obligation at 2.25%)	Amount to be settled (Rs.)	Value of Securities settled	Total amount not settled (Rs.)
1	April 2017 to June 2017	KBRC060	NITHIN VENU	30-Jun-17	682319.66	0	682319.66	0	0	579512	102807.41	0	102807.41
2	July 2017 to Sep 2017	KBRC060	NITHIN VENU	18-Sep-17	1869885.81	0	1869885.81	0	0	1383281	486604.94	0	486604.94
3	Oct 2018 to Dec 2018	KBRC060	NITHIN VENU	22-Oct-18	6988668.3	0	6988668.3	0	0	6514789	473879.36	0	473879.36
4	Jan 2018 to Mar 2018	ABXX105	PRATIK KUMAR GUPTA (HUF)	02-Jan-18	925062.24	0	925062.24	0	0	757618	167444.49	0	167444.49

16. In view of the above, the Noticee was alleged to have violated the provisions of Clause 12 of Annexure of SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009

dated December 03, 2009. In reply to the aforesaid observation, the Noticee in its reply to the SCN has stated that *“Though 4 instances have been noticed 1 instances to relates to only one client that is Nithin Venu (Client code :KBRC060). In any case none of the four instances reported as violation was with any intention to defy the provisions of law. It has happened because of a system error. Based on the observation we have now introduced a system whereby such instances of error were brought light so that the quarterly settlement is properly done. We feel apologetic for the mistake and plead our innocence”*. From the above, I note that the Noticee has admittedly not settled the funds of its clients and thus violated the provisions of Clause 12 of Annexure to SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

17. It was also observed that the Noticee has not settled the accounts of inactive clients as below:

Table 4: Non-settlement of inactive clients

Quarters	Number of inactive clients not settled	Amount of non- settlement (in Rs.)
Apr 17 to Jun 17	2097	7,64,931.81
July 17 to Sept 17	2058	7,56,974.63
Oct 17 to Dec17	2165	8,25,190.16
Jan 18 to March 18	32	2,53,090.42
April 18 to June 18	55	2,44,587.55
July18 to Sept 18	62	2,44,956.47
Oct 18 to Dec 18	68	2,45,154.89

18. From the above table, it is observed that the unsettled funds of inactive credit balance clients were in the range of Rs. 2.44 lakh to Rs. 8.25 lakh within the above specified time. Further, the number of clients not settled during the above period ranged from 32 clients to 2,165 clients. Further, it was observed that settlements were not made to more than 2000 inactive clients during the first three quarters of the IP. In this regard, the Noticee in its reply to the SCN has inter alia submitted that *“As observed by the inspection team, we had taken all steps to bring down the inactive clients from as high of 2165 in December 2017 to as low as 32 clients in the quarter ended on 31st march 2018. The delay had been mainly due to the continued positive indications by the client to restart trading. But as we understood the import and seriousness of the circular we decided to settle all of them. However there had been instances where the funds transferred by NEFT were returned”*. The Noticee has further submitted that post the completion of the inspection, it has completed settlement of 31 inactive clients and in rest of the cases either the funds transferred by NEFT were returned, or the cheques issued to the clients neither got cleared nor returned to it (i.e. the same became stale cheque). From the above, I note that attempt has been made later by the Noticee to settle the client funds, however the client funds for both active and inactive were admittedly not settled during the IP, which clearly shows that Noticee was not in compliance with the requirements of SEBI Circular dated December 3, 2009.

19. In the context of non-settlement of funds and securities by stock broker, I would like to place reliance on a judgment of Hon'ble SAT in the matter of **Indira Securities Pvt Ltd vs SEBI**, Appeal no 50 of 2014, decided on June 23, 2014, wherein Hon'ble SAT had observed the following *"We have minutely perused the contents of SEBI's circular in question as well as the three clarifications issued by NSE and we do not subscribe to the view advanced by the learned counsel for the appellant. The concept of monthly or quarterly running settlement of clients' accounts by the brokers is incorporated in the said circular dated December 3, 2009 with a view to instill greater transparency and discipline in the dealings between the clients and the broker. The circular was issued by SEBI after detailed consultation with various quarters including Investors Association, Secondary Market Advisory Committee (SMAC), Market Participants and major stock exchanges. Therefore, it cannot be said that SEBI issued this circular dated December 3, 2009 as a directive only and not as a mandatory one"*

20. In view of the above, I conclude that the Noticee had failed to settle the client accounts, as brought out above and thus had failed to comply with the provisions of Clause 12 of Annexure to SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

Finding C: Incorrect Reporting of Margin

21. It was observed during inspection that the Noticee has not correctly reported margin to exchange in F&O segment in 4 instances. The cumulative shortfall

of 4 clients was to the tune of Rs. 73,44,432/-. Details pertaining to incorrect reporting of margin is shown below:

Table 5: Incorrect Reporting of Margin

Date	Client Code	Client Name	Total value of funds and securities available	Margin reported	shortfall
20.08.2018	HEXXA20	Acumen Commodities	2,63,19,229.80	3,35,99,004.67	-72,79,775
18.09.2018	AHVR084	Chandra Mohan Reddy Dandu	8,96,897.233	9,27,447.30	-30,550
17.05.2017	HOXX066	Kumar Kuraganti Pavan	8,58,256.69	8,76,117	-17,860
17.05.2017	AHRK001	Ramesh Kumar Jain	59,80,038.41	59,96,285	-16,247

The above instances of short collection of margin as brought out above, were observed not to be in compliance with the provisions of SEBI Circular No. CIR/DNPD/7/2011 dated August 10, 2011. Therefore, it was alleged that the Noticee has violated the provisions of SEBI Circular No. CIR/DNPD/7/2011 dated August 10, 2011. In this regard, I note that the Noticee in its reply to the SCN has contended that with regard to the shortfall of Rs. 72,79,775 relating to client code : HEXXA20 (client Name : Acumen Commodities), Rs.2,63,19,229.80 considered by SEBI in determining available value of funds and securities does not comprise the value of Rs.31,06,192.30/- securities (after hair cut on the basis of var margin) available in the name of Acumen Commodities (India) Limited in CDSL. It was further submitted that the said

client viz. Acumen Commodities (India) Limited is controlled by Santhosh Kumar Agarwal Group as the combined shareholding of Mr. Santhosh Kumar Agarwal, his sons (Akshay Agarwal and Akhilesh Agarwal) and their respective spouses (Chanchal Agarwal and Rekha Agarwal) in the company is 60% fall in the category of promoters, their spouse, dependent children and parents having controlling shareholding in the company. It was further submitted that value of securities held by the members of the aforesaid controlling group in NSDL in their respective demat accounts aggregates to more than Rs. 70 Lakhs (Santosh Kumar Agarwal - more than Rs. 51 Lakhs, Akshay Agarwal - more than Rs. 8 Lakhs, and Akhilesh Agarwal - more than Rs. 11 Lakhs). I

note that Noticee has referred SEBI's Circular No. SEBI/HO/MRD/DRMNP/CIR/P/2018/75 May 02, 2018 and placed reliance on NSE's circular no: NSE/INSP/38154 dated June 27, 2018 which *inter alia* states that in case of Corporates, the promoters having controlling shareholdings, their spouse, dependent children and parents, are the related entities for a client whose balances /securities can be considered for collection and reporting margin. In support, the Noticee has submitted the holding statement of Santhosh Kumar Agarwal, his sons Akshay Agarwal and Akhilesh Agarwal certified by chartered accountant together with their consent. As per Noticee's above submissions, I note that there is no shortfall for the reported margin in respect of one client (Acumen Commodities (India) Limited, client code: HEXXA20), however with respect to the remaining 3 clients, the Noticee has not refuted the observation regarding the shortfall in the reported margin

vis-a-vis the total value of funds and securities available. Accordingly, to that extent, I find that the Noticee has violated the provisions of SEBI Circular No. CIR/DNPD/7/2011 dated August 10, 2011.

Finding D: Absence of call recording system of clients in all locations

22. It was observed during inspection that while the facility for recording of telephone calls were mandated from April 01, 2018 onwards, the Noticee has not completed implementation of the client order recording (voice recording) system till the joint inspection in December 2018. From the available records, I note that the Noticee in its letter dated February 14, 2019 to SEBI has admitted that the telephone recording facility is implemented only in its head office and in ten branches. In the remaining branches, the Noticee has claimed that it is keeping visitors' book. However, the Noticee could not produce physical record of order details from the walk in investors during the inspection. In view of the said observation, it was alleged that the Noticee has violated the provisions of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018. In this regard, I note that the Noticee has submitted "*With respects to voice recording system, please note that we have implemented the voice recording facility in all our branches. We have seen few demos and no software is having complete reconciliation system to check the accuracy. However we are in the process of implementing the same in all our locations soon*". The Noticee has further submitted that "*We have taken effort to convert the clients to online trading and presently almost 65% of our clients are trading*

through mobile or online platform only". In this regard, I note that the call recording system is a parallel obligation. From the above, I note that the Noticee has admittedly not installed call recording system in all of its locations during the IP. Thus, I find that the Noticee has violated the provisions of SEBI Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018.

Finding E: Details not collected for clients who have opted for F & O

23. It was observed during inspection that the Noticee had not collected income details in respect of 35 clients, who had opted for F&O trading and their running account authorization was also not dated. The details of the said 35 clients are as below:

Table 5: Details not collected for clients who have opted for F & O

S. No	Client Code	Client Name	PAN
1	HEXM115	SREENIVASAN K B	AQIPB8162C
2	HOXX924	SIMNA ISSAC DSILVA	ATAPD3747J
3	AUPM061	SASANK RATHOD RAMAVATH	CCCP8660P
4	RSMM063	DEEPAK A MALWADIA	AMQPM8665B
5	TCXX712	DHANASEKARAN R	BRVPD5796B
6	HOXX986	ALFIYA ASHIM	BWAPA8868H
7	HEXM178	RAMESH MATTAYI	AQTPR7580B
8	HCXX336	MOHAMED FAZIL THONIKKADAVATH	BKSPT6595G
9	HCFC049	SHIBINA P	BBBPP4843B
10	ARXX142	SATYANARAYANA UPPALA V V	AANPU9580G
11	HEXM202	SUNIL P J	FUTPS3167Q
12	HOSK156	ARUN KUMAR B	CBCPB5512K
13	AVKV003	LAKKU RAMU	AIRPL1523G
14	KBCM148	NACHIKETHA KRISHNAMURTHY TAVARKERI	BGCP6702P
15	T1X5013	RAJU MAHESWARI	AGKPM0758K
16	HEXM150	JIGO PALATHINKAL	ABBPP6209N
17	ARXX102	VEERAVENKATA SURESH KUMAR ADUSUMILLI	ACBPA0808R
18	HEXM154	MARY	EFWPM4692P
19	AHNK021	MADHUBABAU NADUMURI	AHHPN7661G

20	HOXX887	SUDHAKARAN AYYAPPAN VADYAT	ABNPV8988L
21	T1XX607	PADMANABHAN NARASIMMAN	DXCPP7300E
22	HEXM149	JACOB JOHN	ATKPJ8189Q
23	RSSS20	KANTABEN NEMCHAND CHANDARIA	ABQPC2214H
24	AAPR050	PURUSHOTHAM GADE	AOIPG8405M
25	T1X5014	KARTHIKA SIVAKUMAR	IYFPS0284F
26	HOXX903	RAMESH KUMAR AGARWAL	AAJPA7723K
27	AASM016	TAMILARASAN SHOBANA	GIDPS7564C
28	HOXX1035	REJICE SAMSON	EKKPS4192H
29	HOSK117	ARAVIND KUDAMALLOORSSERIL REGHUNATH	CEXP8196H
30	HCXX351	PADMINI KOCHUKOTTARAM	ANEPK1096M
31	ARXX109	RAVI TEJA PAGOLU	EBNPP4431A
32	HOXX941	BINU BABU	BOOPB6697B
33	ARXX113	SUDHAKAR JAKKA	ASEPS7034G
34	T1X5012	THIAGARAJAN RUBA	AHGPR1406A
35	HOXX939	MOHAMMED SHEMEER	GXZPS5049R

24. In view of the aforesaid the Noticee was alleged to have violated the provisions of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011. In this regard, I note that the Noticee in its reply to the SCN has stated that out of the 35 client they have collected the income proof from 18 clients. It was further submitted that the remaining 17 clients are inactive and have deactivated their trading account in our back office. Vide its reply dated September 07, 2020 the Noticee has further submitted that the last page of Annexure 3 of the SEBI Circular No. CIR/MIRSD/16/2011 August 22, 2011 provides an illustrative list of *additional documents to be collected*. The Noticee has further stated in this regard that *“It is not mandated therein that all documents listed therein should be collected nor that ITR Acknowledgment or salary slip, or copy of Form 16 should be collected in all cases. Hence, we sought clarification from the exchange in that regard; and we were advised that any one of the documents*

listed therein may be sufficient. Thus, Demat statement/ bank statement being the documents enlisted therein, we collected the same. In view of this we request you to kindly treat as compliant in this regard and drop the charge against us". From the material available, on perusal of the signing off report of BSE, duly signed by the Noticee and the screen shots of online CKYC records, it is seen that Noticee had not collected income details in respect of 35 clients, who had opted for F&O trading and their running account authorization was also not dated. Further, in this regard I note that the Noticee has submitted the documentary evidence regarding the income proof collected in respect of 18 clients which includes copy of either the bank statement or holding statement or the Income Tax Return of the said clients, which are permitted documents as per SEBI's aforesaid circular dated August 22, 2011. I note that in respect of 17 clients the Noticee has submitted that those clients are inactive and that they have deactivated their trading account in their back office. Considering the Noticee's aforesaid submissions regularizing the observations, I am inclined to take a lenient view w.r.t the allegation of the violation of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011 by the Noticee.

Finding F: Delay in uploading client details in CKYC system

25. It was observed during inspection that, out of 92 individual sample clients verified during the inspection, delay was observed in uploading client details in CKYC systems in case of 55 clients. The delay in uploading client details in the said instances varied between 1 day to 338 days. Further, the signing off

report of BSE, duly signed by the Noticee also mentions the said observations. In view of the same, it was alleged that the Noticee has violated the provisions of SEBI Circular No. CIR/MIRSD/66/2016 dated July 21, 2016. I note that The Noticee in its reply to the SCN has submitted that “...at the initial stages due to software changes the process of uploading the CKYC were not automated, we have done the same manually. Hence the delay occurred. We request you to pardon us in this regard. As the system is automated now, we are uploading CKYC within the prescribed time limit given by SEBI”. From the above, I note that the Noticee has admitted to the delay in uploading the client details in the CKYC system during the IP. Thus, I find that the Noticee has violated the provisions of SEBI Circular No. CIR/MIRSD/66/2016 dated July 21, 2016

26. Further, in view of the conclusions arrived at previous paragraphs in respect of monthly / quarterly settlement of funds and securities, incorrect reporting of margin, non-availability of call recording system, and delay in upload of client details in CKYC system, as brought out above, I further conclude that the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act, which reads as under :

SEBI Act

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Finding G: DP Operations - Account opening and KRA

27. During the IP, it was observed from account opening and KRA data that the

Noticee had not reported correct details of the following;

- i. In 1 instance, KYC was kept on hold by KRA due to deviation in submitted documents by the Noticee to KRA for the CDSL BO ID: 16311
- ii. The Noticee has not uploaded the second account holder KYC details to KRA for the following CDSL Bo IDs: 10305, 10339 & 16267.
- iii. The Noticee has not dispatched Account Opening intimation letter details to new BOs from January 2018.
- iv. The Noticee has provided option for DIS to POA clients while opening new demat account. In case of CDSL BO IDs: 10227 & 12490, the BO had requested the Noticee to issue DIS book while opening the account. However, the Noticee did not issue the DIS book to above mentioned BOs.
- v. The Noticee has not followed maker and checker concept properly and error occurred while opening the new demat account.
- vi. In case of NSDL client IDs 10609808 and 10617568, there was delay in uploading the KYC records on the systems of KRA.
- vii. In 33 cases, the Noticee has not uploaded the KYC details with CYKCR or uploaded KYC details with CKYCR not within the stipulated timeline.

Details of the said instances are as below:

Sl. No.	CL. CODE	PAN No.	DP ID	Client Name	CKYC NO	DATE of CKYC	AGREEMENT DATE / ACTIVATION DATE	NUMBER OF DELAY IN UPLOAD OF CKYC
1	10602554	BHMPV9327F	IN300896	VASANTHA KUMARI P K	Not applicable	Not uploaded	24-May-18	Not applicable
2	10606316	AEAPP4550Q	IN300896	CUPPU BALAKRISHNAN PRABHAKAR	Not applicable	Not uploaded	30-Jan-18	Not applicable
3	10606871	BMQPS2046R	IN300896	SANTHOSH THRIVENI	Not applicable	Not uploaded	30-Jan-18	Not applicable
4	10607010	ATAPD3747J	IN300896	SIMNA ISSAC DSILVA	Not applicable	Not uploaded	30-Jan-18	Not applicable
5	10607526	AOWPK4441B	IN300896	RUBY KOSHY	Not applicable	Not uploaded	06-Feb-18	Not applicable
6	10607671	ABLPA3005H	IN300896	JEEVAN KUMAR AGARWAL	10023397716	22/02/2018 14:30:02	07-Feb-18	12
7	10608203	AXKPK2349D	IN300896	MRUTHYUNJAY V KORISHETTAR	10023397722	22/02/2018 14:30:02	15-Feb-18	4

8	10608810	BARPP8491E	IN300896	JILY JOY PATTILAKUZHYYIL	Not applicable	Not uploaded	23-Feb-18	Not applicable
9	10609533	CCCPR8660P	IN300896	SASANK RATHOD RAMAVATH	Not applicable	Not uploaded	09-Mar-18	Not applicable
10	10609808	ABZPR3991D	IN300896	RENGARAJAN A	Not applicable	Not uploaded	09-Mar-18	Not applicable
11	10609808	AUDPS5591H	IN300896	SASIKALA R	Not applicable	Not uploaded	09-Mar-18	Not applicable
12	10610097	AJKPA4997R	IN300896	SOBY ANTONY	Not applicable	Not uploaded	12-Apr-18	Not applicable
13	10610353	AMQPM8665B	IN300896	DEEPAK A MALWADIA	10035126982	17/04/2018 12:26:46	09-Apr-18	5
	10610353	ARIPM8674K	IN300896	CHETAN A MALWADIA	10035127010	17/04/2018 12:26:46	09-Apr-18	5
14	10610968	BRVPD5796B	IN300896	DHANASEKARAN R	Not applicable	Not uploaded	18-Apr-18	Not applicable
15	10611231	ABNPV8988L	IN300896	SUDHAKARAN Ayyappan Vadyat	Not applicable	Not uploaded	24-Apr-18	Not applicable
	10611231	BOAPS0021J	IN300896	SNIYA SUDHAKAR	Not applicable	Not uploaded	24-Apr-18	Not applicable
	10611231	AFZPV9686H	IN300896	VALSALA S V	10036945723	30/04/2018 15:22:25	24-Apr-18	3
16	10611266	ABRPE1954H	IN300896	SHOME EAPEN	Not applicable	Not uploaded	02-May-18	Not applicable
17	10611602	AHQPY8207Q	IN300896	YOUNGALI VENKATESHWAR	Not applicable	Not uploaded	23-May-18	Not applicable
18	10611792	BWAPA8868H	IN300896	ALFIYA ASHIM	10041885191	30/05/2018 12:48:49	23-May-18	4
19	10612263	AQTPR7580B	IN300896	RAMESH MATTAYI	10046556220	27/06/2018 12:20:07	04-Jun-18	20
	10612693	AOEPS1450A	IN300896	SADASIVAN M P	10046552793	27/06/2018 11:55:46	20-Jun-18	4
	10612693	HGMPS9097G	IN300896	PUSHPA SADASIVAN	10046552794	27/06/2018 11:55:46	20-Jun-18	4
	10612923	BAIPS0871C	IN300896	SEENAMMA JIJI	Not applicable	Not uploaded	26-Jun-18	Not applicable
20	10613723	AKVPA9504G	IN300896	GEORGE ALEX	Not applicable	Not uploaded	27-Jul-18	Not applicable
21	10613774	BKSPT6595G	IN300896	MOHAMED FAZIL THONIKKADAVATH	Not applicable	Not uploaded	23-Jul-18	Not applicable
22	10613854	APTPN3902J	IN300896	NEELI SWAPNA	10091256725	06/12/2018 12:07:23	01-Aug-18	124
23	10613900	AJTPP4148C	IN300896	LALY PAUL	Not applicable	Not uploaded	27-Jul-18	Not applicable
	10613900	AFVPK1759A	IN300896	MAJO VICHATTU KURIAKOSE	Not applicable	Not uploaded	27-Jul-18	Not applicable
24	10615921	ABKPD2325C	IN300896	SWARGATHMADATHIL R DAYANANDA PRABHU	10089542258	29/11/2018 15:20:26	03-Oct-18	54
	10615921	AFTPP6035L	IN300896	SASIKALA PRABHU	Not applicable	Not uploaded	03-Oct-18	Not applicable
25	10615964	AFGPA9054D	IN300896	AKSHAY KIRTI AGARWAL	10089542191	29/11/2018 15:20:18	26-Sep-18	61
	10615964	ACKPA6346H	IN300896	KAUSHAL KUMARI AGARWAL	Not applicable	Not uploaded	26-Sep-18	Not applicable
26	10616406	AMNPM9971H	IN300896	MAHESH NANJUNDE GOWDA	Not applicable	Not uploaded	12-Oct-18	Not applicable
	10616406	AASPU6660L	IN300896	PRASANNA U	Not applicable	Not uploaded	12-Oct-18	Not applicable
27	10616957	BBBPP4843B	IN300896	SHIBINA P	10089542193	29/11/2018 15:20:18	19-Oct-18	38

28	10616981	AANPU9580G	IN300896	SATYANARAYANA UPPALA V V	Not applicable	Not uploaded	24-Oct-18	Not applicable
29	10616990	FUTPS3167Q	IN300896	SUNIL P J	Not applicable	Not uploaded	24-Oct-18	Not applicable
30	10617568	BHRPR6569N	IN300896	CHANDNI R	10089542225	29/11/2018 15:19:52	01-Nov-18	18
	10617568	ADKPM4094P	IN300896	ANITHA MOHAN	10091255141	06/12/2018 11:52:57	01-Nov-18	25
31	10617568	ABEPN4917C	IN300896	RADHAKRISHNAN NAIR M G	Not applicable	Not uploaded	01-Nov-18	Not applicable
32	10618350	AUQPD5299Q	IN300896	JENIFAR D SOUZA	10093101860	14/12/2018 15:21:43	20-Nov-18	14
33	10618384	ABEPN4917C	IN300896	RADHAKRISHNAN NAIR M G	Not applicable	Not uploaded	26-Nov-18	Not applicable

viii. The Noticee has not obtained balance sheet and share-holding pattern every year from non- individual clients.

ix. In case of bank details change for NSDL client ID 10144960, signature on request differed from the one captured in DPM.

x. The Noticee is not obtaining family flag declaration where same mobile number and email ids are captured in different client accounts.

xi. The Noticee has not sent communication to clients where same mobile number or email ID is captured in more than five client account.

xii. The Noticee has not provided five KYC reconfirmation samples. Further, for two KYC reconfirmation sample, auditor certification are not provided

28. I note that the above details are mentioned in the signing off report of CDSL and NSDL. I note that the Noticee in its reply to the SCN has submitted that *"It is true that we have omitted to upload the 33 client codes in the CKYC portal as observed by the inspection team. Based on the observation, we uploaded the entire 33 cases in CKYC portal. Also kindly take note that now we have implemented a strict maker checker system to avoid recurrence of such lapses in future. We request you to consider our request to drop the charge in this regard"*. In this regard, I note that the Noticee has admitted the aforesaid deficiencies. I further note that the Noticee has not refuted the other

observations as regards to not reporting the correct details which emanated from analyzing the account opening and KRA data (stated in previous paragraph 27). Thus, I find that the Noticee has violated the provisions of SEBI Circular No. CIR/MIRSD/5/2012 dated April 13, 2012 read with SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011.

Finding H: Issuance and execution of DIS

29. I note that during inspection, the following discrepancies were observed

from details of issuance and execution of DIS:

- a) In 14 instances, there is delay in uploading the scanned image of executed DIS in Central Depository Accounting System (CDAS).
- b) In 8 cases, booklets were forwarded to branches and the branches subsequently hand delivered them to clients. However, the branches have not maintained record or register of hand delivery. Further, branches do not have access to verify client signature. The cases where there are no records of hand delivery of DIS booklets are as below:

S. No.	Client ID	DIS
1	10528318	20173406-10
2	10521623	20173581-85
3	10598827	20173646-50
4	10514056	20173666-70
5	10537881	20173791-95
6	10169199	20174116-20
7	10359127	20174401-05
8	1044186	20174756-60

- c) In cases of DIS issuance (client ID: DIS) 10541189:20173906-10 and 10617074:20180056-60, was hand delivered by DP officer (RM) to client. In issuance register, RM has signed instead of the client. Further, there are no records of hand delivery to the client.
- d) In case of DIS issuance (client ID: DIS) 10608096:20173571-75 and 10200092:20174231-35, DIS booklets were hand delivered to client, however, record of issuance was not added in issuance register.
- e) The Noticee was not blocking used slips in back office. Further, the Noticee was processing all clients DIS directly on eDPM other than own POA based transactions.

30. In view of the above, the Noticee was alleged to have violated the provisions of SEBI Circular CIR/MRD/DP/01/2014 dated January 07, 2014 and SEBI Master Circular No. SEBI/HO/MRD/DP/CIR/P/2016/134 dated December 15, 2016 regarding guidelines for delivery instruction slips issuance and processing [point no. 1.10 (Monitoring of DIS, point no. iv)]. I note that the above instances of non-compliances have been detailed in the signing off reports of NSDL and CDSL. With respect to the aforesaid allegation, the Noticee in its reply to the SCN has submitted *"We have taken note of your observation and have completely stopped issuing DIS by "hand delivery ". Presently we are issuing the DIS based only on client requests and are sending the same to the registered address only of the clients through courier/ registered post and are also keeping a record for the same for*

reference". I note that the Noticee has not refuted the other observations including the one related to the non-blocking of used slips in back office. Thus, I note from the above that the Noticee has admitted the aforesaid non-compliances, and accordingly, I find that the Noticee has violated the provisions of SEBI Circular CIR/MRD/DP/01/2014 dated January 07, 2014 and SEBI Master Circular No. SEBI/HO/MRD/DP/CIR/P/2016/134 dated December 15, 2016.

Finding I: Non dispatch of transaction statement

31. Regulation 43 of the SEBI (Depositories & Participants) Regulations, 1996

states as follows –

Statement of accounts.

43. Every participant shall provide statements of account to the beneficial owner in such form and in such manner and at such time as provided in the agreement with the beneficial owner.

32. It was however observed during inspection that the Noticee has not dispatched the transaction statement to BOs on monthly basis from January 2018. I note that the said observation is highlighted in the signing off report of CDSL dated February 01, 2019 and the same has been signed by the compliance officer of the Noticee. In view of the same, it was alleged that the Noticee has violated the provisions of Regulation 43 of the SEBI (Depositories & Participants) Regulations, 1996. The Noticee in its reply to the SCN has stated that "*In this regard please note that as NSDL is sending the transaction statements directly to the clients, we were under genuine impression that CDSL is also directly*

sending the transaction statement to the clients from their end. We apologise for the mistake from our part. But we used to send the statements to clients who are requesting for the same. However we have started sending the statements from January 2019 onwards through post. Please note that from July 2019 onwards the same is automated and we will be sending the statements to the registered e-mail ID of client concerned and will keep a log file as proof of delivery". In this regard, I note that Regulation 43 of the SEBI (Depositories & Participants) Regulations, 1996 casts an independent obligation on the DP to provide the statements of account to the BOs, and not on the depository, and thus I find no merit in the Noticee's above submission that they were under the impression that CDSL was directly sending the transaction statement to its clients. In view of the above, I conclude that the Noticee has violated the provisions of Regulation 43 of the SEBI (Depositories & Participants) Regulations, 1996.

33. Further, in view of the conclusions arrived at previous paragraphs in respect of account opening & KRA, incorrect reporting of margin, issuance & execution of DIS and non despatch of transaction statements, as brought out above, I further conclude that the Noticee is liable for monetary penalty under Section 19G of the Depositories Act, which reads as under:

Depositories Act

Penalty for contravention where no separate penalty has been provided.

19G. Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder for

which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

34. I note that Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.

35. Further, I note that the provisions of Section 15J of the SEBI Act read with Rule 5 of SEBI Adjudication Rules, 1995, Section 19-I of the Depositories Act read with Rule 5 of the Depositories Adjudication Rules, and Section 23J of the SCRA read with Rule 5 of the SCR Adjudication Rules, 2005 require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely:

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

36. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors /clients

on account of default by the Noticee. From the material available on record, I note that the violations are not repetitive. However, I am of the view that the abovementioned lapses on the part of the Noticee cannot be viewed lightly and are serious in nature. Hence, the lapses/violations committed by the Noticee deserves and attracts penalty as per law.

ORDER

37. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of SEBI Act, Section 19-I of the Depositories Act, and Section 23J of SCRA, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of SEBI Adjudication Rules, Section 19H of the Depositories Act read with Rule 5 of Depositories Adjudication Rules and Section 23-I of the SCRA read with Rule 5 of the SCR Adjudication Rules, hereby impose the following penalty on the Noticee viz. Acumen Capital Market (India) Pvt. Ltd.

S. No.	Penalty	Under the provisions of
1	Rs. 3,00,000/- (Rupees Three Lakh Only)	Section 23D of SCRA
2	Rs. 1,00,000/- (Rupees One Lakh Only)	Section 15HB of SEBI Act
3	Rs. 1,00,000/- (Rupees One Lakh Only)	Section 19G of Depositories Act
Total	Rs. 5,00,000/- (Rupees Five Lakh Only)	

38. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The Noticee shall remit / pay the said amount of

penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

39. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department–DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”. The Noticee shall also provide the following details while forwarding DD / payment information:

- a) Name and PAN of the Noticee
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

40. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

41. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules, Rule 6 of the Depositories Adjudication Rules, and Rule 6 of the SCR Adjudication Rules, copy of this order is being sent to the Noticee viz. Acumen Capital Market (India) Pvt. Ltd. and also to the Securities and Exchange Board of India.



LEGAL
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

Date: December 10, 2020

Place: Mumbai

**K SARAVANAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**