BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.AO/PJ/VP/01/2016]

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 BY ADJUDICATING OFFICER) RULES, 1995

In respect of

M/s Sushil Financial Services Private Limited

SEBI Registration No.:

National Stock Exchange (NSE) (INB/F/E230607435)

Bombay Stock Exchange Limited (BSE) (INB/F010982338)

MCX-SX (INE260607435)

(PAN: AAACS8454K)

In the matter of

M/s Sushil Financial Services Private Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted a limited purpose inspection of books of accounts and other records ofM/s Sushil Financial Services Private Limited(hereinafter referred to as '**the Noticee'**)for the period from 01.04.2012 to 04.09.2014 (hereinafter referred to as the '**Inspection Period'**) to examine whether the Noticee has complied with the provisions of the SEBI circulars.

2. The following irregularities/deficiencies were *inter alia*observed:

2.1.1. Inter mingling of funds between securities client bank account and commodities client bank account.

2.1.2. Using the credit fund balances of clients for purposes other than specified in the circulars.

2.1.3. Not incorporating/ mentioning the word "Client Account" in the bank account name which is required as per the SEBI circular.

Therefore, it was alleged that by the above acts, the Noticee had violated the provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993 and SEBI Circular No. SEBI/MRD/SE/CIR-33/2003/27/08 dated 27.08.2003 read with Regulation 9(f) of SEBI (Stock Brokers & Sub brokers) Regulations, 1992 (hereinafter referred to as **"SBSB Regulation")** read with Clause A(2) and A(5) of the code of conduct specified under schedule IIof SBSB Regulation making it liable under Regulation 26 (xiii) of SBSB Regulation, as applicable.

APPOINTMENT OF ADJUDICATION OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide order dated 05.05.2015 under Section 19 read with Section 15 I of Securities and Exchange Board of India, Act, 1992 (hereinafter referred to as **'SEBI Act'**) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules'**) and under section 19 of SEBI Act read with section 23-I of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SCRA Act"**) read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **'SCRA Rules'**) to inquire

into and adjudge under Section 15HB of the SEBI Act and under section 23D of SCRA Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated30.09.2015(hereinafter referred to as **'SCN'**) was issued to the Noticee under rule 4 of the Rules read with rule 4 of SCRA Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HB of the SEBI Act and under section 23D of SCRA Act for the alleged violationsas brought out above and specified in the said SCN.

5. The Noticee vide its letter dated 05.11.2015 has submitted its reply stating as under:

   5.1. *We deny that we have violated the provisions alleged violations under Section 15 HB of the SEBI Act and under Section 23 D of SCRA Act the alleged violations/ non-compliance of the provisions of Clause A(2) and A(5) of the code of conduct specified under Schedule II read with Regulation 9 (f) of SEBI SBSB Regulations read with SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993 and read with SEBI circular No. SEBI/MRD/SE/CIR-33/2003/27/08 dated 27.08.2003 triggering Regulation 26(xiii) of SBSB Regulation by us as observed during the inspection period01.04.2012 to 04.09.2014.*

   5.2. The detailed submissions with respect to the said show cause notice are dealt with in the succeeding paras.The Noticee has further stated that:

   In view of the above submission, we therefore request you to withdraw the said show cause notice under reply and the charges of alleged violations of the provisions of Regulation 26 (xiii) of SBSB Regulation, provision of SEBI Circular No.

SMD/SED/CIR/93/23321 dated 18.11.1993 and read with SEBI Circular No. SEBI/MRD/SE/CIR-33/2003/27/08 dated 27.08.2003 read with Regulation 9 (f) of SBSB Regulation read with Clause A (2) and A (5) of the code of conduct specified under schedule II read with regulation 7 of SBSB Regulation be dropped against us.

6. Pursuant to the same, in accordance with the principle of natural justice and in order to provide a fair chance to the Noticee to put forth its case, vide hearing notice dated 19.11.2015, the Noticee was granted an opportunity of hearing on 01.12.2015. Mr. Ajay N Shah, Director, Mr. Suresh S Nemani, Compliance Officer and Ms. AsmaShaik, Senior Manager, of the Noticee Authorized Representatives (hereinafter referred to as the 'ARs') appeared on behalf ofthe Noticee. During the course of hearing, the ARs reiterated the submission made vide letter dated 05.11.2015 and further submitted that they would like to make further submission along with the supporting documents.

7. The Noticee vide its letter dated 07.12.2015 has made its additional submissions, which are dealt with in the succeeding paras.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the written and oral submissions of the Noticee, documents submitted by the Noticee and the other material available on record. The allegations against the Noticeeis that:
   8.1. The Noticeehasviolated the provisions of Regulation 26 (xiii) of SBSB Regulation, provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993 and read with SEBI

Circular No. SEBI/MRD/SE/CIR-33/2003/27/08 dated 27.08.2003, as applicable.

8.2. Further that by the above acts, theNoticeehas failed to adhere to the prescribed code of conduct in respect of due skill, care and diligence in the conduct of all his business and to strictly abide by all the provisions of SEBI Act and the rules, regulations issued by SEBI and the stock exchanges from time to time as may be applicable to him, thus, violated Regulation 9(f) read with clauses A(2) and (5) of code of conduct for stock brokers specified under Schedule II of SBSB Regulation.

9. The issues that arise for consideration in the present case therefore are:

9.1. Whether the Noticee has violated Regulation 26 clause (xiii) of SBSB Regulationread with SEBI circular no. SMD/SED/CIR/93/23321dated November 18, 1993 read with SEBI Circular No. SEBI/MRD/SE/CIR-33/2003/27/08 dated 27.08.2003, as applicable;

9.1.1. By transferring amounts/ fundswhich amounts to inter mingling of funds between securities client bank account and commodities client bank account.

9.1.2. By using the credit fund balances of clients for purposes other than specified in the circulars.

9.1.3. By not incorporating/ mentioning the word "Client Account" in the bank account name which is required as per the SEBI circular.

9.2. In view of the aforesaid, whether the Noticee has failed to adhere the prescribed code of conduct in respect of due skill, care and diligence,

and thereby did not abide by the Act, Rules and Regulations in term of Regulation 9(f) read with clauses A(2) and (5) of code of conduct for stock brokers specified under Schedule II of SEBI SBSB Regulation, 1992?

9.3. Does the violation, if any, on the part of the Noticee attract monetary penalty under sections 15HB of the SEBI Act and Section 23D of SCRA Act?

9.4. If so, what would be the monetary penalty that can be imposed against the Noticeetaking into consideration the factors mentioned in section 15J of the SEBI Act and Section 23J of SCRA Act?

10. Before moving forward, it will be appropriate to refer to the relevant provisions ofRegulation 26 (xiii) of SBSB Regulation, provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993 and read with SEBI Circular No. SEBI/MRD/SE/CIR-33/2003/27/08 dated 27.08.2003 read with Regulation 9(f) of SBSB Regulation read with Clause A(2) and A(5) of the code of conduct specified under schedule II of SBSB Regulationwhich reads as under:

Regulation 26 of the Broker Sub-broker Regulation, 1992.

Liability for monetary penalty.

26. *A stock broker or a sub-broker shall be liable for monetary penalty in respect of the following violations, namely—*

(i) …..to (xii)……

(xiii) Failure to segregate his own funds or securities from the client's funds or securities or using the securities or funds of the client for his own purpose or for purpose of any other client.

(xiv)….. to (xx)…..

Regulation 9 of the Broker Sub-broker Regulation, 1992.
Conditions of registration.

9. *Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-*

(a) the stock broker holds the membership of any stock exchange;

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

(c) where the stock broker proposes change in control, he shall obtain prior approval of the Board for continuing to act as such after the change;

(d) he shall pay fees charged by the Board in the manner provided in these regulations;

(e) he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

(g) he shall at all times maintain the minimum networth as specified in Schedule VI.

Stock-Brokers to abide by Code of Conduct.

SCHEDULE II

SECURITIES AND EXCHANGE BOARD OF INDIA
(STOCK BROKERS AND SUB-BROKERS) REGULATIONS, 1992
CODE OF CONDUCT FOR STOCK BROKERS
(Regulation 9)

A. GENERAL

(1) INTEGRITY: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) EXERCISE OF DUE SKILL AND CARE: A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.

(3) MANIPULATION: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) MALPRACTICES: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) COMPLIANCE WITH STATUTORY REQUIREMENTS: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the stock exchange from time to time as may be applicable to him.

Provisions of SEBI circular no. SMD/SED/CIR/93/23321dated November 18, 1993

REGULATION OF TRANSACTIONS BETWEEN CLIENTS AND BROKERS

1. It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account. The above principles and the circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.

A] Member Broker to keep Accounts: Every member broker shall keep such books of accounts, as will be necessary, to show and distinguish in connection with his business as a member -

i. Moneys received from or on account of each of his clients and,

ii. the moneys received and the moneys paid on Member's own account.

B] Obligation to pay money into "clients accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii).

C] What moneys to be paid into "clients account". No money shall be paid into clients account other than -

i. money held or received on account of clients;

ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;

iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;

iv. acheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.

D] What moneys to be withdrawn from "clients account". No money shall be drawn from clients account other than -

i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for each client;

ii. Such money belonging to the Member as may have been paid into the client account

under para 1 C [ii] or 1 C [iv] given above;
iii. money which may by mistake or accident have been paid into such account in contravention of para C above.
E] Right to lien, set-off etc., not affected. Nothing in this para 1 shall deprive a Member broker of any recourse or right, whether by way of lien, set-off, counter-claim charge or otherwise against moneys standing to the credit of clients account.
2. It shall be compulsory for all Member brokers to keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities. Such accounts for client's securities shall, inter-alia provide for the following:-
a. Securities received for sale or kept pending delivery in the market;
b. Securities fully paid for, pending delivery to clients;
c. Securities received for transfer or sent for transfer by the Member, in the name of client or his nominee(s);
d. Securities that are fully paid for and are held in custody by the Member as security/margin etc. Proper authorization from client for the same shall be obtained by Member;
e. Fully paid for client's securities registered in the name of Member, if any, towards margin requirements etc.;
f. Securities given on Vyaj-badla. Member shall obtain authorization from clients for the same.
3. Member Brokers shall make payment to their clients or deliver the securities purchased within two working days of pay-out unless the client has requested otherwise. Stock Exchange shall issue a Press Release immediately after the pay-out.
4. Member Brokers shall buy securities on behalf of client only on receipt of margin of minimum 20 percent on the price of the securities proposed to be purchased, unless the client already has an equivalent credit with the broker. Member may not, if they so desire, collect such a margin from Financial Institutions, Mutual Funds and FII's.
5. Member brokers shall sell securities on behalf of client only on receipt of a minimum margin of 20 percent on the price of securities proposed to be sold, unless the member has received the securities to be sold with valid transfer documents to his satisfaction prior to such sale. Member may not, if they so desire, collect such a margin from Financial Institutions, Mutual Funds and FII's.
6. Member brokers shall issue the contract note for purchase/sale of securities to a client within 24 hours of the execution of the contract.
7. In case of purchases on behalf of clients, Member brokers shall be a liberty to close out the transactions by selling the securities, in case the client fails to make the full payment to the Member Broker for the execution of the contract within two days of contract note having been delivered for cash shares and seven days for specified shares or before pay-in day (as fixed by Stock Exchange for the concerned settlement period), whichever is earlier; unless the client already has an equivalent credit with the Member. The loss incurred in this regard, if any, will be met from the margin money of that client.

8. In case of sales on behalf of clients, Member broker shall be at liberty to close out the contract by effecting purchases if the client fails to deliver the securities sold with valid transfer documents within 48 hours of the contract note having been delivered or before delivery day (as fixed by Stock Exchange authorities for the concerned settlement period), whichever is earlier. Loss on the transaction, if any, will be deductible from the margin money of that client.

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Provisions of SEBI Circular No. SEBI/MRD/SE/CIR-33/2003/27/08 dated 27.08.2003

1.Please refer to SEBI circular No.SMD/SED/CIR/93/23321 and letter No. SMD-1/23341 dated November 18, 1993regarding regulation of transactions between clients and brokers.

2.It is reiterated that brokers and sub-brokers should not accept cash from the client whether against obligations or as margin for purchase of securities and / or give cash against sale of securities to the clients.

3.All payments shall be received / made by the brokers from / to the clients strictly by account payee crossed cheques / demand drafts or by way of direct credit into the bank account through EFT, or any other mode allowed by RBI. The brokers shall accept cheques drawn only by the clients and also issue cheques in favour of the clients only, for their transactions. However, in exceptional circumstances the broker or sub-broker may receive the amount in cash, to the extent not in violation of the Income Tax requirement as may be in force from time to time.

4.Similarly in the case of securities also giving / taking delivery of securities in "demat mode" should be directly to / from the "beneficiary accounts" of the clients except delivery of securities to a recognized entity under the approved scheme of the stock exchange and / or SEBI.

11. The charges leveled against the Noticee and my findings thereon are as under:

11.1. It was alleged that, the Noticee had an associate company named Sushil Global Commodities Pvt. Ltd. (hereinafter referred to as SGCPL) which was a commodities broker. SGCPL was also registered as a client with the Noticee having a trading account with the member with client code: SG0003. It was further observed that even though SGCPL is a client of the Noticee, it had never traded in the securities

market. It was further observed that the client account of SGCPL was used by SGCPL for the purpose of selling securities taken by it as collateral from its commodities clients for margin in commodities segment towards recovery of outstanding debits from its commodities clients. The member has submitted that the bank account numbers of SGCPL were used for the aforesaid securities market transactions were 00600340047594 with HDFC Bank and 004010200417570 with Axis Bank Ltd. It was however observed that funds are not only transferred from the Noticee's client bank accounts into these SGCPL bank accounts but there were vice versa fund transfers as well, i.e. from SGCPL bank a/c to the Noticee's client bank accounts. It was also observed that funds were transferred from the aforesaid SGCPL bank accounts to and from other commodities bank accounts as well. As a result, these fund transfers amount to inter mingling of funds transactions between securities client bank account and commodities client bank account. A list of such funds transactions were annexed as Annexure-4A, 4B and 4C to the SCN.

11.2. Noticee has stated in its reply that:

We would like to reiterate that Sushil Global Commodities Pvt. Ltd. (SGCPL) one of the associate company is a client of Sushil Financial Services Private Limited (SFSPL) having a unique client code SG0003. Further, we would like to mention that even though SGCPL is a client of SFSPL, it has never traded on its own account in the securities market. We would like to mention that client code SG0003 of SGCPL is used only for the purpose of selling securities taken by SGCPL as collateral from its commodities clients towards recovery of outstanding debits. Further, sale proceeds/ payout of funds towards sale of such collateral shares in SG0003 were paid from ***SFSPL's Client Bank Account*** *no. 004010200166324 - BSE Clients A/C and 004010200166300 - NSE Clients A/C with Axis Bank to* ***SGCPL's Own Bank Account*** *no. 004010200417570 with Axis Bank Ltd. purely in the nature of Broker Client relationship wherein SFSPL has merely acted as a Broker and SGCPL as a corporate client of SFSPL. Further, we like to inform you that there is no single*

funds transfer from aforementioned SGCPL's Own Bank Accounts to any of SFSPL Client Bank Account. We are further enclosing herewith list of commodities clients whose collateral shares were sold by SGCPL under client code SG0003 alongwith the copy of the ledger accounts. Refer ***Annexure 2****. Further, we are enclosing copy of bank statement of SFSPL Axis Client Bank Account No. 004010200166324 - BSE Clients A/C and 004010200166300 - NSE Clients A/C through which payout has been made to SGCPL for above mentioned transactions in SG0003. Refer* ***Annexure 3****. Also, enclosing copy of bank statement of SGCPL's Own Bank Account no. 004010200417570 with Axis Bank Ltd showing receipt of payout for above mentioned transactions. Refer* ***Annexure 4****. Hence, based on above facts, there is no intermingling of funds in the aforementioned matter.*

Comments for Annexure 4A*:With respect to Annexure 4A of your letter, we like to inform you that entries reflecting in the bank statements of FY 2012-13 of Axis Bank Account no. 00401020166324, 004010200166300, 004010200590815 and 004010202763565 were entries taken in F.Y. 2011-12 in our books of accounts. However, the same were subsequently cleared in the bank in the month of April, 2012 pertaining to F.Y. 2012-13. Please refer entries highlighted in* ***Annexure 5.*** *With respect to entry dated 31st July 2012 in account no. 004010202187190 amounting to Rs.7,000/-, bank has incorrectly mentioned name in narration as 'Sushil Global Commodities Pvt Ltd.' Whereas said entry is actually a transfer between SFSPL NSE CDX Client bank account no. 004010202829065 to SFSPL NSE Derivatives Client bank account no. 004010202187190 (contra entry). Copy of bank statement for both the said accounts is enclosed for your ready reference. Refer* ***Annexure 6****. Further, we would like to mention that while extracting the bank statement, the Account Id is incorrectly mentioned as 174010200002691 in Annexure 4A whereas the correct bank account no. is 004010200166300. With respect to entries reflecting in the bank statement of FY 2013-14 of Axis Bank account no.00401020166324 and account no. 004010200166300 are pertaining to transfer of funds towards payout for collateral shares sold by SGCPL under client code SG0003. Details of the same are already explained in point no. 5 above.Remaining instances as given in Annexure 4A of your letter are part of Annexure 4B for which comments have already been given by us for each such transfer. Further, w.r.t. various SFSPL client bank accounts for the period 2013-14 where only 'SUSHIL' is mentioned in the narration, we would like to inform that narration as 'SUSHIL' means transfers done between SFSPL one Client Bank Account to SFSPL another Client Bank Account only i.e. the said entries are in the nature of Contra entries. Sample instances from Annexure 4A was already explained and necessary supporting was submitted to the inspection team vide our letter dated January 08, 2015.The same is once again enclosed as* ***Annexure 7*** *for your ready reference.*

Remaining instances are part of Annexure 4B for which comments have already been given by us for each such transfer.

Comments for Annexure 4B: *Further, as was informed to the inspection team, there are few instances wherein funds have been transferred from SFSPL client bank account to SGCPL client bank accounts and vice versa purely as an exceptional. Details of such transfers with our comments for each such transfer were provided to the inspection team. The same has been Annexed vide your aforementioned letter as Annexure 4B which is enclosed once again with relevant supporting for your ready reference. Refer* ***Annexure 8****.*

Comments for Annexure 4C:*With respect to Annexure 4C of your letter, for amounts received in SGCPL's Axis Own Bank account no. 004010200417570 pertain to payout received by SGCPL from SFSPL towards sale of collateral shares in client code SG0003 as stated in point no. 5 above.*
Further, w.r.t. SGCPL's HDFC Own Bank account no. 00600340047594, certain transfer's have been made from SFSPL Own Bank account to said SGCPL's Own Bank account and vice-versa pertains to adjustment of debit/credit or vice-versa in commission ledger of Authorised Persons. The same are appearing as 'FT-00600340019544-SUSHIL FINANCIAL SER' and 'FT-00600340019551--SUSHIL FINANCIAL SER' in Own bank statement of SGCPL. Account no. 00600340019544 and 00600340019551 are Own Bank account of SFSPL maintained with HDFC Bank. The said transfers are between Own to Own bank accounts and thus cannot be termed as intermingling of funds. Based on our above submissions for Annexure 4A, 4B and 4C, we are of the view that there is no intermingling of client funds

With regards to said observation, we would like to mention that given summary of instances of transfers between securities and commodities and vice and versa were made purely as exceptional cases. Looking at our total clientele and volume, there were only 104 instances of transfers. Further out of the said 104 instances, there are 101 instances which constitutes an amount of Rs.1,64,562.72/- and further 3 instances involving one client amounting to Rs. 2,00,00,000/- was done based on consent of the client and as a onetime exception. Consent taken from the said client is enclosed as ***Annexure 9****.*

In this regard, we would like to mention that we could not come across any circular/guidelines specifically barring the transfers of funds between equities and commodities. After commodity exchange came into existence, clients of equity segment also started trading in commodities. Hence, based on authorisation letter from the clients and in the interest of clients, certain transfers had been done. Subsequently, FMC vide its Circular No. Div. III/I/89/07 dated 16.12.2011

(refer point no. 3 (c) A.iv of the circular) specifically clarified that authorizations shall not be obtained from clients for any adjustment of funds amongst securities exchange and commodities exchange. w.e.f. 1st April 2012. Hence, in lieu of the said circular, such transfers were not made subject to certain exceptional cases which were already provided by us as a part of our earlier submission including our reply dated 05.11.2015. Copy of the said FMC circular is enclosed for your ready reference as Annexure 3.

Documents in respect of poof of Rs.2 crore showing as clients own amount

We would like to mention that Rs.1 crore lying as credit balance in his MCX ledger account belongs to client's own funds which was transferred from its MCX ledger to NSE ledger account and re-transferred from NSE to MCX lying as credit balance in NSE ledger account, same is done based on written consent of the client. Hence, effectively it was only Rs.1 crore of client money which was transferred from commodity to equity and vice-versa as stated above. Copy of said written consent letter of client is enclosed herewith for your ready reference as Annexure 4.

11.3. I have perused the material available on record and the replies submitted by the Noticee in support of its contentions. I find that, theNoticeehas admitted that funds were transferred from commodities bank account to securities bank account and vice versa in 104 instances involving Rs 2.01 Crs.

11.4. By setting off such debit /credit dues the fund of securities client bank account is inter mingled with commodities funds.

Apart from these transfers there are transfers from securities bank account to commodities bank account for which the Noticee has given acceptable explanation.

There are 11 fund transfers from commodities bank account to securities bank account amounting to Rs. 7.36 lakhs which are pertaining to period prior to inspection period i.e. FY2011-12. There

are also 23 fund transfers commodities bank account to securities bank account amounting to Rs. 2.01 lakhs.

The statement of the member that these were exceptional is not accepted as there were frequent instances of transfers.

11.5. I have noted that the circular dated November 18, 1993 is quite clear in its import. It has clearly brought out as to what moneys to be paid into client accounts and what moneys to be withdrawn from client accounts and clearly spelt out that no other moneys could be paid or withdrawn from client accounts. I note that circular allowed withdrawal of moneys from client account towards (i) money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the broker from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the broker, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client; (ii) such money belonging to the broker as may have been paid into the client account under para 1 C [ii] or 1 C [iv] of the circular; (iii) money which may by mistake or accident have been paid into such account in contravention of para C of the circular. The circular states that no money shall be drawn from client accounts other than for the aforesaid purpose.

11.6. It is therefore, I note that the circular does not permit moneys to be withdrawn from the clients account for or towards payment of debt due to the group company of the broker from the client, or, money in

respect of which there is liability of client to the group company of the broker. The debt/ liability of the client towards the group company of the client cannot become the debt/ liability of the noticee with the client.

11.7. I note that SEBI Circular No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 states that brokers and sub-brokers should not accept cash from the client whether against obligations or as margin for purchase of securities and/or give cash against sale of securities to the clients. It further states that all payments shall be received/ made by the brokers from/ to the clients strictly by account payee crossed cheques / demand drafts or by way of direct credit into the bank account through EFT, or any other mode allowed by RBI. The circular states that brokers shall accept cheques drawn only by the clients and also issue cheques in favour of the clients only, for their transactions. However, in exceptional circumstances the broker or sub-broker may receive the amount in cash, to the extent not in violation of the Income Tax requirement as may be in force from time to time.

11.8. Thus, it is clear that SEBI Circulars No. SMD/SED/CIR/93/23321 dated November 18, 1993 and No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 did not allow transfer of funds (payments and receipts) between Noticee and its group company which is a broker dealing in commodities.

11.9. The reply of the Noticeeis thus not acceptable as the findings above are in violations of SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 regarding regulations of transactions

between clients and brokers and SEBI circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003.

11.10. In view of the above, I find thatthe Noticee has not complied with the provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993 read with SEBI Circular No. SEBI/MRD/SE/CIR-33/2003/27/08 dated 27.08.2003read with Clause A (2) and A (5) of the code of conduct specified under schedule II read with Regulation 9 (f) of SBSB Regulation.

12. It was alleged from the selected sample dates taken as to whether the credit clients funds balances as per client ledgers after taking into account those clients positions at the end of day across all segments tallied with the funds lying in client bank accounts at the end of day:

12.1. that the sum of credit balances of all credit clients of the Noticee after taking into account those clients positions at the end of day across all segments was greater than the amount of funds lying in the bank statement at the end of those dates, i.e. sum of all funds available as per all bank statements on the sample dates were lesser than sum of all credit clients balances. It was further alleged that, credit funds of all credit clients should have been available as per the bank account statements as at the end of day on any given day which indicates that credit fund balances of clients were used for purposes other than specified by the SEBI circulars.

12.2. The Noticee in its replies has stated that:

With regards to observation that sum of credit balances of all credit clients of the broker after taking into account total clients positions at the end of day across all

segments was greater than the amount of funds lying in bank statements were lesser than the sum of all credit clients balances. We would like to submit that as per column "G" of Annexure 8 of your aforementioned letter, based on client's net positions, there are sufficient balances with us.

In this regard, we would like to inform you that as per us, only sum of credit balances of all credit clients should not be considered for verifying funds lying in banks accounts as the same would be in isolation because pay-in and pay-out happens on a net basis and hence as per us even debit balances of all debit clients should be considered.We would also like to draw you attention that the pay-in and pay-out process at exchange level is also done on net basis. For e.g. if there is pay-in of Rs.100 for client A and simultaneously pay-out of Rs.102 for client B for a particular day, then the exchange considers the net settlement at member level and settles the member account with Rs.2 towards pay-out. Hence based on our above view, there are sufficient balances with us which can be seen in figures as mentioned in column "G".

12.3. I have perused the material available on record and the replies submitted by the Noticee in support of its contentions. I find that the submissions of the Noticee are notacceptable as funds of credit balance clients cannot be used for obligations of debit balance clients. It is clear that the Noticee is netting the balance of credit balance client against the debit balance clients. I decline to accept the submissions as the total of corresponding credit balance lying in the client bank account should have been matched with the total credit as per the client ledgers after due adjustments of obligations at end of day, cheque deposit delays and other accounting practices. Further, it is observed that the differences at the end of each of the 24 months were higher as compared to the debit clients total as brought out below:

(Figures in Rs.)

Date+A2 :G18	Credit Clients Total	Debit clients total	Net Credit/(Debit)Balance	Bank Balance In all Client Money/ Settlement Bank Amount	Difference	Net as per Noticce
	A	B	C=A-B	D	E=D-A	G=D-C
Apr-12	389,491,543	412,425,196	-22,933,653	182,647,450	-206,844,093	205,581,103
May-12	367,238,835	476,129,665	-108,890,830	93,181,778	-274,057,057	202,072,608
Jun-12	356,182,774	456,059,127	-99,876,353	32,193,469	-323,989,305	132,069,822
Jul-12	364,278,985	464,293,148	-100,014,163	127,519,389	-236,759,596	227,533,552
Aug-12	357,975,494	477,340,511	-119,365,017	124,050,891	-233,924,603	243,415,908
Sep-12	324,445,845	721,308,512	-396,862,667	49,972,979	-274,472,866	446,835,646
Oct-12	492,276,882	660,783,122	-168,506,240	201,601,836	-290,675,046	370,108,076
Nov-12	382,588,723	703,710,030	-321,121,307	78,027,704	-304,561,019	399,149,011
Dec-12	402,498,032	889,180,039	-486,682,007	87,140,157	-315,357,875	573,822,164
Jan-13	456,101,711	800,171,321	-344,069,610	103,603,554	-352,498,157	447,673,164
Feb-13	346,325,593	827,303,420	-480,977,827	2,560,615	-343,764,978	483,538,442
Mar-13	293,046,687	661,706,476	-368,659,789	45,695,687	-247,351,000	414,355,476
Apr-13	259,498,095	655,414,481	-395,916,386	50,595,058	-208,903,037	446,511,444
May-13	306,944,505	663,783,464	-356,838,959	150,332,457	-156,612,048	507,171,416
Jun-13	272,171,436	723,864,262	-451,692,826	30,686,682	-241,484,754	482,379,508
Jul-13	264,701,928	698,562,405	-433,860,477	86,846,307	-177,855,621	520,706,784
Aug-13	290,912,834	744,381,177	-453,468,343	60,162,609	-230,750,225	513,630,952
Sep-13	311,362,179	736,573,451	-425,211,272	103,126,427	-208,235,752	528,337,699
Oct-13	326,903,066	413,465,140	-86,562,074	147,151,506	-179,751,560	233,713,580
Nov-13	264,549,962	450,250,026	-185,700,064	84,490,030	-180,059,932	270,190,094
Dec-13	325,473,404	647,164,990	-321,691,586	72,029,469	-253,443,935	393,721,055
Jan-14	375,757,338	564,851,824	-189,094,486	91,151,967	-284,605,371	280,246,453
Feb-14	320,178,745	565,086,373	-244,907,628	37,900,185	-282,278,560	282,807,813
Mar-14	304,657,037	528,089,980	-223,432,943	93,244,231	-211,412,806	316,677,174

12.4. I therefore find that, as a result of the mismatch on account of actual bank balances being less than corresponding total of credit client ledgers, theNoticeewas using credit balance of credit clients for purpose other than the respective clients in violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993 read with SEBI Circular No. SEBI/MRD/SE/CIR-33/2003/27/08 dated 27.08.2003 read with Clause A (2) and A (5) of the code of conduct specified

under schedule II read with Regulation 9 (f) of SBSB Regulation. It also makes him liable under Regulation 26(xiii) of SBSB Regulation.

13. It was further alleged that,

13.1. TheNoticee has not used the word "Client Account" in the name of client bank accounts in term of SEBI circular dated November 18, 1993. The details of the bank accounts are as under:

Bank Name	Account No.	Account Name
Axis Bank A/c	004010202190705	Not specified.
Axis Bank A/c	004010202187215	Not specified.
Axis Bank A/c	004010200166300	Not specified.
Axis Bank A/c	004010202187190	Not specified.
Axis Bank A/c	004010200590815	Not specified.
Axis Bank A/c	004010202829056	Not specified.
Axis Bank A/c	00401020263574	Not specified.
Axis Bank A/c	913020008140684	Not specified.
Citi Bank A/c	100263	Not specified.
HDFC Bank A/c	0602340027422	Not specified.
HDFC Bank A/c	0602340027415	Not specified.
HDFC Bank A/c	0602340027432	Not specified.
HDFC Bank A/c	2302560001723	Not specified.
J&K, Syndicate & Federal A/c	0016010100001916	Not specified.
J&K, Syndicate & Federal A/c	0146010100001551	Not specified.
Syndicate Bank	50773050000207	Not specified.

13.2. *The* Noticee has stated in its replies that:

In this regard, we would like to mention that all client bank accounts are designated as "Client Account" only. Further all banks accounts have been opened with nomenclature as prescribed vide SEBI circular dated November 18, 1993. As per the requirement of inspection team, Bank Statements were provided in excel format at the time of inspection. There were certain words in the nomenclature which may have got truncated in print out. The documentary proofs mentioning the proper nomenclature of bank accounts were submitted vide our letter dated December 27,

2014. We are once again enclosing herewith proof for the bank accounts designated as "Client Account" as mentioned on page no.7 as ***Annexure 10****.*

13.3. I have perused the material available on record and the reply submitted by the noticee in support of its contentions including Annexure 10 of the reply regarding the documentary proofs mentioning the proper nomenclature of bank accounts. SEBI circular dated November 18, 1993 states that

" *Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit:"*

In light of the same, the charge against the Noticee is not established.

14. Thus, from all of the aforesaid, it is observed that the Noticee,by transferring the funds between securities bank account and commodities bank account as brought out abovehad not complied with provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993 and read with SEBI Circular No. SEBI/MRD/SE/CIR-33/2003/27/08 dated 27.08.2003 as brought out above.

15. Further by using the funds of the credit clients for the purposes other than specified, the Noticeehad not complied with provisions of Regulation 26 (xiii)of SBSB Regulation, provision of SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993 and read with SEBI Circular No. SEBI/MRD/SE/CIR-33/2003/27/08 dated 27.08.2003 as brought out above.

16. Hence, I further note that the Noticee did not adhere to the prescribed code of conduct in respect of fairness, due skill, care and diligence, and did not abide by the SEBI Act, 1992 and rules and regulations made thereunder, in term of Regulation 9(f) read with clauses A (2) and (5) of code of conduct for stock brokers specified under Schedule II of SBSB Regulations.

17. Thus theallegations as brought about above in para 11 and para 12 stand established.

18. The 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.*".

19. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15HB of the SEBI Act, 1992 and Section 23D of SCRA Act, which read as under :

15HB.Penalty for contravention where no separate penalty has been provided.-

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 may extend to one crore rupees.

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 not exceeding one crore ruppes

20. While determining the quantum of monetary penalty under section 15HB, I have considered the factors stipulated in section 15J of SEBI Act and section 23J of SCRA Act, which reads as under:-

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, 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."

Factors to be taken into account by adjudicating officer.

23J. *While adjudging the quantum of penalty under section 23-I, the adjudicatingofficer shall have due regard to the following factors, namely:—*

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

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

(c) the repetitive nature of the default.]

21. In the instant case, it is found 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 on account of default by the Noticee.

22. As a result of the mismatch on account of actual bank balances being less than corresponding total of credit client ledgers I find that that the member is using credit balance of credit clients for purpose other than the respective clients and the difference amounts involved are consistently high and hence repetitive.

23. Further, I find that even an attempt was not made to explore the feasibility of compliance with provisions of Regulation 26 (xiii) of SBSB Regulation, provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993 and read with SEBI Circular No. SEBI/MRD/SE/CIR-33/2003/27/08 dated 27.08.2003 as brought out in the preceding paras.

ORDER

24. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs.16,00,000/- (Rupees Sixteen lacs only) on the Noticeeunder section 15HB of the SEBI Act for violation stated in para 11 and para 12 above andRs. 8,00,000/- (Rupees Eight lacs only) on the Noticee under section 23D of SCRA Act for violation stated in para 12 above. Therefore, a total penalty of Rs. 24,00,000/-(Rupees Twenty Four Lacs Only) is imposed upon the Noticeewhich according to me will be commensurate with the violations committed by the Noticee.

25. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft

should be forwarded to Shri Sujit Prasad,Chief General Manager, MIRSD, SEBI Bhavan, Plot No. C – 4 A, "G" Block, BandraKurla Complex, Bandra (E), Mumbai – 400 051.

26. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: 29.01.2016 **PRASAD P JAGADALE**
Place: Mumbai **ADJUDICATING OFFICER**