

Before the
MEMBER AND CORE SETTLEMENT GUARANTEE FUND COMMITTEE
Of
NSE Clearing Limited
Exchange Plaza, Bandra Kurla Complex, Bandra East, Mumbai – 400051

In the matter of Clearing Member

M/s SMC Global Securities Ltd

CORAM:

Mrs. Bhagyam Ramani	-	Chairperson of the Committee
Mr. N.K.Maini	-	Committee Member
Mr. Harun R Khan	-	Committee Member
Mr. Vikram Kothari, (MD)	-	Committee Member

Also Present:

Ms. Hima Bindu Vakkalanka – Interim Compliance Officer, NSE Clearing Ltd.

Ms. Divya Potdar- Manager-Compliance, NSE Clearing Ltd.

Invitee:

Mr. Ravindra Bathula – General Counsel, NSE Clearing Ltd.

Meetings of the Committee were held through Video Conferencing due to the COVID Pandemic.

I. BACKGROUND

1. M/s SMC Global Securities Ltd. (“**Noticee**”), having its registered office at 11/6B, Shanti Chambers, Pusa Road, New Delhi-110005, is registered as a Clearing Member (CM) with NSE Clearing Limited (“NCL”) since 1995. (SEBI Registration No. INZ000199438).
2. NCL conducted a Limited Purpose Inspection (“**LPI**”) of the Noticee’s books, registers, records and other relevant documents in Futures & Options (F&O) and Currency Derivatives (CD) segment with respect to M/s Yuvraj Securities (Yuvraj) for the period July 01, 2019 to July 27, 2021 in view of the receipt of email dated July 26, 2021 from SEBI wherein Writ Petition W.P.A. No. 10880 of 2021 filed by clients of Yuvraj on June 28, 2021 was forwarded to NCL.

II. LPI FINDINGS: -

3. The following is a summary of the findings and details of violations by the Noticee as observed in the LPI report dated August 6, 2021: -

A. Findings

- (i) During the period under review, data was sought from the Noticee to ascertain if there was any sale of securities of clients of Yuvraj by the Noticee. From the scrutiny of the information submitted by the Noticee, it was observed that the Noticee sold securities amounting to Rs. 164,06,891.65, out of which Rs. 139,38,978.80 was of clients of Yuvraj. The list of securities sold is as per Annexure A.
- (ii) The Noticee executed Clearing Member-Trading Member Agreement (CM-TM Agreement) on February 15, 2018 in Futures & Options Segment and Currency Derivatives segment with Yuvraj for providing clearing services.
- (iii) The Noticee is required to upload details of “Trading Member wise - client wise securities” to NCL in accordance with NCL circular no.NCL/COMP/41068 dated May 20, 2019. This report is a weekly submission, wherein details pertaining to securities received as collaterals from trading member such as Trading Member Name, Trading Member PAN, client UCC, Client PAN, ISIN, Security Type and Quantity have to be provided for each holding date. The Noticee had uploaded the securities details pertaining to Yuvraj for the period under review , i.e. , August 2019 to July 2021.

(iv) In order to ascertain the due diligence carried out by the Noticee as to whether there were debit balances in client account before liquidating the securities, the following information was sought:-

a. Communication between the Noticee and Yuvraj with reference to sale of securities.

b. Client Codes for which the securities have been liquidated, ISIN, Scrip Name, quantity sold, amount of sale of securities, whether these clients had debit balances and the correspondence made with Yuvraj in this regard.

(v) The Noticee provided communication from Yuvraj related to sale of securities. However, Noticee did not provide the information with respect to the details for which client the securities have been sold and whether there were debit balances for such clients. For the same, Noticee responded as under:

“With regard to UCC wise detail, we would like to inform you that we have sold the stocks only on request of TM- M/s Yuvraj Securities. In his request letters/emails to sell shares, he has mentioned that shares belongs to him. Your good-self would appreciate that TM is only person who was in the best position to know who is having the debit balance and whom shares he wish to sell. Since TM is member of reputed exchange and he was aware of the rules and regulations of exchanges and regulators, so, on his request/instruction, we only sold those stocks which were identified and requested by TM to sell.”

(vi) NCL sought information from the Noticee, vide emails dated July 19, 2021 and July 29, 2021, during the course of LPI. Noticee provided the information regarding ISIN, Scrip Name, Quantity and Amount of securities sold. Also, it

provided the communication received from Yuvraj in this regard. This data was analysed with weekly reporting and the following were observed:-

Sell Date#	Sell amt (In Rs.) *			Yuvraj communication
	As per SMC data	As per NCL weekly reporting for TM	As per NCL weekly reporting for Client@	
1-Aug-19	51,21,600	0	51,21,600.00	Communicated as TM securities
16-Aug-19	15,36,550	0	15,36,550.00	Communicated as TM securities
22-Oct-19^\$	26,60,788.45	24,56,967.85	1,92,875.60	Communicated as TM securities
22-Nov-19	7,90,051.75	0	7,90,051.75	Communicated as TM securities
26-Nov-19	51,05,429.5	0	51,05,429.50	Communicated as TM securities
27-Mar-20	3,31,478.05	0	3,31,478.05	Communicated only for sell but not mentioned the owner of securities
3-Jul-20	4,34,588	0	4,34,588.00	Communicated only for sell but not mentioned the owner of securities
20-Jul-20	4,26,405.9	0	4,26,405.90	Communication for TM and family securities
Total	16,406,891.65	2,456,967.85	13,938,978.80	

#Data of securities which are sold off is submitted by SMC.

*Valuation is done as per T-1 day price

^wherever sell quantity is equal to TM reported quantity; shares were considered as sell of TM shares even though there is reporting for client as well.

@If weekly reporting of ISIN which is sold, is not done for T-1, then it is considered either for T day or previous reported date for that ISIN.

\$ ISIN of ICICI BANK is not reported by SMC to NCL either for TM or for client; however, it is sold off on October 22, 2019

- (vii) Noticee had been uploading to NCL on a weekly basis client-wise and ISIN-wise details of securities placed by Yuvraj with it. As per the details uploaded by the Noticee, it can be seen that the securities it had received from Yuvraj belonged to clients of Yuvraj. Hence, though the Noticee received instructions from Yuvraj to sell the securities stating that the securities either belonged to Yuvraj itself or to its family, NCL weekly reporting shows that these securities were reported as that of clients.

- (viii) Analysis of claims of securities of petitioners who have filed Writ Petition was also done on the basis of the data uploaded by the Noticee to NCL on weekly basis and the data submitted by the Noticee during inspection. The analysis was done for the period July 2019 to July 2021. Of the securities sold by the Noticee, it was verified if there were any securities claimed by petitioners and if these were uploaded by the Noticee to NCL in the weekly upload under client category. However, it was observed from the data uploaded by the Noticee to NCL, that there is no data pertaining to one of the petitioners i.e. Mantri Engineering Co. Pvt Ltd. for the period under review. On the analysis of the data, observations are as given below:-

Sell Date by Noticee	Scrip Name	Sell Qty	ISIN	Claim Qty by petitio ners	T-1 NCL Weekly upload for petitioners by Noticee	Observation for weekly upload by Noticee to NCL	
						Client	Trading Member
3-Jul-20	Balkrishna Industries Limited	340	INE787D01026	1140	340	No reporting for other clients for this ISIN	No reporting for this ISIN
22-Oct-19	Reliance Industries Limited	600*	INE002A01018	2750	3750	No reporting for other clients for this ISIN	Reported qty. For TM- 600 shares
22-Oct-19	Yes Bank Limited	35*	INE528G01027	337	550	Other clients' reported qty.500 shares	Reported qty. For TM- 35 shares.
26-Nov-19	Reliance Industries Limited	2250	INE002A01018	2750	3750	No reporting for other clients for this ISIN	No reporting for this ISIN
26-Nov-19	Maruti Suzuki Industries Limited	220	INE585B01010	220	220	No reporting for other clients for this ISIN	No reporting for this ISIN
22-Oct-19	Larsen & Toubro Limited	1050*	INE018A01030	379	825	Other clients' reported qty.21 shares	Reported qty. For TM- 1050 shares.
Not sold by Noticee	Dalmia Bharat Limited	-	INE00R701025	1500	-	Not reported	Not reported

* wherever sell quantity is equal to TM reporting, shares were considered as sell of TM shares even though there is reporting for client as well.

- a. The above ISINs are claimed by the petitioners. From weekly reporting, it was observed that these ISINs were uploaded only under the UCC of the petitioners. There was no upload for these ISINs under the other UCC of clients. However, in case of Yes Bank Limited and Larsen & Toubro Limited, there was reporting of other clients also.
- b. There was no reporting for security Dalmia Bharat Limited having ISIN INE00R701025 either for trading member or for client by Noticee to NCL during the review period in weekly reporting.
- c. Also, the security having name as Larsen & Toubro Limited which is claimed in the said Writ petition by the petitioner Mantri Engineering Co. Pvt Ltd. was not observed to be reported for the said petitioner during the review period. However, this security is reported for other clients including petitioners viz. Vijayshree Steels Pvt Ltd and Chiron Commodities Trading Pvt. Ltd as reflected in weekly reporting of Noticee to NCL.
- d. From above table, it was observed that on July 03, 2020 and November 26, 2019, ISINs which were sold by Noticee were

reported to NCL only for petitioners. Also, there was no reporting for Trading Member for these ISINs on these days. Hence, it may be concluded that these securities were clients' securities.

- e. On the basis of the collateral information uploaded by Noticee to NCL on weekly basis, it may be construed that Noticee was aware that the securities provided by Yuvraj as collaterals were that of the clients.

Therefore, in view of the availability of the details of the securities placed by the clients of Yuvraj and in order to act in accordance with the SEBI Circulars dated April 17, 2008 and June 20, 2019 and in order to ensure that client securities are sold only for the purpose of meeting the respective clients' obligations, Noticee ought to have ascertained which clients the securities belonged to and whether there were any debit balances for the said clients before liquidation of securities. However, Noticee has failed to identify the client securities which are being sold by not correlating them with the defaulting clients and, therefore, it is observed that Noticee has failed to comply with the above referred SEBI/NSE Circulars and NCL Regulations

B. Violations observed

It was observed that the Noticee had violated the following Circulars / Regulations of the Securities and Exchange Board of India ("SEBI") / NCL relating to Misuse of Client Securities: -

- a) SEBI Circular no. MRD/DOP/SE/Cir-11/2008 dated April 17, 2008 (“**2008 SEBI Circular**”);
- b) NSE Circular no. NSE/INSP/2008/66 dated April 21, 2008 (“**2008 NSE Circular**”); and
- c) SEBI Circular no. CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019 regarding handling of clients’ securities by Trading Members/ Clearing Members (“**2019 SEBI Circular**”);
- d) Regulation 10.2.4 of the NCL F&O Segment Regulations (“**NCL Regulations**”).

III. Show Cause Notice: -

- 4. A Show Cause Notice dated August 24, 2021 (“**SCN**”) was issued to the Noticee as to why appropriate disciplinary action in terms of Rule 1 and Rule 2 of Chapter V of Rules of NCL (F&O) should not be initiated for the non-compliances / violations mentioned in the SCN. The said SCN referred to the contents of the aforesaid LPI and observed that the Noticee has not complied with and violated the provisions of the aforesaid SEBI/NSE circular and NCL Regulations.
- 5. In terms of the SCN and vide NCL letter dated September 21, 2021, the Noticee was provided an opportunity of personal hearing before the Member and Core Settlement Guarantee Fund Committee of NCL (“**Committee**”) on October 6, 2021. The Noticee

furnished its reply to SCN, vide its letter dated August 31, 2021 (“**Reply**”). The Noticee appeared for personal hearing before the Committee on October 6, 2021.

6. At the personal hearing before the Committee held on October 6, 2021, the Noticee was represented by Mr. Ajay Garg-Director & CEO- SMC Global Securities Ltd, Mr. Ashok Kumar Aggarwal-Compliance Officer, SMC Global Securities Ltd Mr. Vinay Tripathi-AVP-TM- SMC Global Securities Ltd and Mr. Shreyas Jain-Legal Department- SMC Global Securities Ltd.

IV. Submissions made by the Noticee

7. The Noticee submitted that all the regulations which were allegedly stated to have been violated by the Noticee clarified that such laws do not fasten any Trading Member's liability upon the Clearing Member i.e the Noticee nor Noticee had violated any of the said laws. And hence, no disciplinary action in terms of Rule 1 and/ or Rule 2 of Chapter V of Rules of NCL (F&O) should be initiated against the Noticee.
8. Noticee submitted that the notice under reply is vague, non-descriptive, illegal and incapable of being acted upon as such as neither it specifies the Law with respect to Clearing member's role and its liability in case if any Trading member becomes defaulter under the provisions of chapter XII-of NSE bye-laws, so that Noticee can assess the alleged liability if any, nor does it state the exact violation on the part of the Noticee

being the Clearing Member. Non- striking out of un- necessary words also renders the notice invalid.

9. The Noticee submitted that it had been tarnished on the basis of a presumptive theory which is evident from the content of para 5 which states that "*...noticee ought to have ascertained which clients the securities belonged to and whether there were any debit balances for the said clients before liquidation of securities*" and hence in absence of specific bye-laws, Noticee cannot be held vicariously liable for the trading Member's default.
10. The Noticee submitted that in the present dispute i.e. pertaining to Yuvraj Securities, Noticee admittedly acted only as a Clearing Member (CM) and being a clearing member, role of CM remains limited towards the fulfillment of liabilities / obligations towards Clearing Corporations.
11. The Noticee submitted that it never acted as a Trading Member for the clients / constituents of Yuvraj Securities nor any law of the SEBI purports undersigned to be due diligent for the acts/ omissions of the trading member and fetches the CM vicariously liable for the acts and omissions of its Trading Member i.e. Yuvraj Securities.
12. Noticee submitted that SEBI Circular No. MRD/DOP/SE/CIR-11/2008 dated 17.04.2008 in ref. to SMD/SED/CIR/93/23321 dated 18.11.1993 and SEBI/MIRSD/DPS-1/CIR-31/2004 dated 26.08.2004 followed by NSE Circular No. NSE/INSP/2008/66 dated

21.04.2008 are not applicable upon the Clearing Members i.e. Noticee as the same are meant for "Collateral deposited by clients with brokers" which in the present case are Yuvraj Securities and its clients / constituents.

13. Noticee submitted that SEBI Circular No. CIR/HOJMIRSD/DOP/CIR/P/2019/75 dated June 20, 2019 which is pursuant to above referred Circulars is again not applicable upon the Clearing Members. The essence for the same can be derived upon reading all the circulars together which prima facie on the face of record crystallize the role to be played by the trading member towards its clients and does not attract, or make clearing member liable for the acts/ omissions of the trading member. A perusal of the circular can be inferred that all these regulations are for broker which in present case is Yuvraj securities.
14. Noticee submitted that as a clearing member of Yuvraj Securities , it neither violated any Circular nor is in contravention of Regulation 10.2.4 of NCL FO Regulations.
15. The Noticee submitted that it had complied with the NCL circular NCL/COMP/41068 dated 20.05.2019, by uploading client wise information on the NCL system as provided by Yuvraj Securities from time to time and further in accordance with the bye-laws drawn by SEBI followed by the Exchange had dealt with the liquidating procedure towards the collateral, and being due diligent which although CM is not duty bound to do so, always verified before liquidation.
16. Noticee submitted that it never liquidated collaterals on its own during entire business period with Yuvraj Securities. Noticee always sought confirmation from Yuvraj

Securities regarding the script, quantity and its owner. Moreover, Noticee had liquidated collaterals to an extent of debit balances as on that day and released balance shares to Yuvraj Securities (TM) in due course, which is crystal clear from the communication already shared.

- 17.** The Noticee has quoted relevant extract of NCL circular dated May 20, 2019 namely; *“Clearing Members are hereby informed that a standardized report on details of collaterals (across Clearing corporations) placed by the trading members and clients with them is to be uploaded on a weekly basis. This is applicable for Clearing Members who are clearing for other Trading Members. Clearing Members shall make the following 2 submissions giving details of the Trading member and client wise collateral held by them. 1. DP account-wise, Trading Member and client-wise and ISIN wise details of securities (Non-cash collateral) held. The format of reporting is enclosed as Annexure-1. 2. Trading Member-1 wise details of Cash & cash equivalent collateral. The format of reporting is enclosed as Annexure-2.”* and has stated that it will be incorrect to draw an inference that because Noticee had knowledge, had to act further upon it under due diligence as the same had not been a duty of the Clearing member under the bye-laws of SEBI and exchange. Rules are clear for clearing member, who takes action pursuant to the directions of its trading member towards its margin money and information with CM remains limited to an extent of the information sent by the TM.
- 18.** Noticee further stated that under the bye-laws of SEBI and Exchange, Clearing member is not responsible neither strictly nor vicariously for any action and inaction of its trading member i.e. Yuvraj Securities in the present case.

19. Noticee submitted that there is no misuse of Client Securities in the capacity of being clearing member of Yuvraj who was its trading member and in February 2021 had been declared defaulter by the NSE against whom proceedings of the default committee had already been initiated.

V. Findings of the Committee

20. The Noticee's submission that SEBI Circular No. MRD/DOP/SE/CIR-11/2008 dated 17.04.2008 in ref. to SMD/SED/CIR/93/23321 dated 18.11.1993 and SEBI/MIRSD/DPS-1/CIR-31/2004 dated 26.08.2004 followed by NSE Circular No. NSE/INSP/2008/66 dated 21.04.2008 is not applicable upon the Clearing Member is not tenable due to the following reasons:-

20.1 It may be noted that the SEBI's Circular No. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 addressed to all stock Exchanges ("2008 SEBI Circular") states, inter alia, as under:-

"... in order to reiterate the need for brokers to maintain proper records of client collateral and to prevent misuse of client collateral, it is advised that :-

2.1 Brokers should have adequate systems and procedures in place to ensure that the client collateral is not used for any purposes other than meeting the respective client's margin requirements/ pay-ins....."

20.2 It may be noted that following the 2008 SEBI Circular, NSE had issued Circular No. NSE/INSP/2008/66 dated April 21, 2008 ("the 2008 NSE Circular") to all

Clearing Members and Trading Members, drawing the attention of all members to the 2008 SEBI Circular and expressly making it clear that the 2008 SEBI Circular was being circulated for “*ready reference and compliance with the provisions thereof*”.

20.3 Therefore, it is not open for the Noticee to contend that it is entitled to liquidate the collateral, since on the basis of the weekly upload to NCL, Noticee was aware that the securities belonged to the clients and not to Yuvraj. Further, “Client/Constituent” for a clearing member has been defined in Regulation 1.7 of the NCL F&O Regulations as under:

“A Client / Constituent means a person, on whose instructions and on whose account the Clearing Member clears and settles deals. For this purpose, the term “Client” shall include all registered constituents of trading members of Specified Exchange.

Explanation 1 : The terms ‘Constituent’ and ‘Client’ are used interchangeably in the Byelaws, Rules and Regulations”

Thus, as regards a Clearing Member, the terms “Clients” / “Constituents”, include also the clients/ constituents of the Trading Members for whom the Clearing Member undertakes the clearing of trades. The Noticee cannot contend that “client” would only mean the trading member and not the clients of the trading member.

21. The Noticee's contention that the SEBI Circular No. CIR/HOJMIRSD/DOP/CIR/P/2019/75 dated June 20, 2019 is not applicable upon the Clearing Members is not tenable due to the following:-

21.1 The 2019 SEBI Circular was issued by SEBI to, inter alia, all Trading Members/ Clearing Members through stock exchanges/ clearing corporations. Clause 1 of the 2019 SEBI Circular states as under:

“In order to protect clients’ funds and securities, the Securities Contracts (Regulation) Act, 1956 and Securities and Exchange Board of India (Stock-Brokers) Regulations, 1992 specifies that the stock broker shall segregate securities or moneys of the client or clients or shall not use the securities or moneys of a client or clients for self or for any other client.”

21.2 Para 2 of the 2019 SEBI circular has stipulated that the term “stock broker” means Trading Member/ Clearing Member and in the said circular, SEBI had referred to all the previous SEBI circulars, including the 2008 SEBI Circular which are applicable to both Trading Members and Clearing Members with respect to handling of client’s funds and securities.

21.3 The main issue in the present case is the misuse of clients’ securities. SEBI and the market infrastructure institutions have been most concerned by the misuse of clients’ securities and from time to time, various circulars have been issued to put in place systems to prevent the same. The core issue is that in terms of the 2019 SEBI Circular, no trading member, clearing member or professional

clearing member can be allowed to misuse any investors' / clients' securities. No trading member, clearing member or professional clearing member can be permitted to unilaterally sell off a clients' securities other than to recover that same clients legitimate dues, and all trading members, clearing members or professional clearing members have to ensure that securities of only debit balance / defaulting clients are sold off for recovery of their dues if and when the client defaults.

- 22 Therefore, it is untenable for the Noticee to contend that the 2008 SEBI circular and the 2019 SEBI circular are not applicable to clearing members. The Committee unequivocally holds that the said circulars are applicable to all Clearing Members.
- 23 The Noticee's contention that it being a clearing member of Yuvraj Securities had neither violated any Circular nor contravened Regulation 10.2.4 of NCL FO Regulations, is not acceptable. The following provisions are mentioned in the NCL Regulations regarding utilisation of margin monies by a clearing member;

Regulation 10.2.4 of the NCL F&O Regulations states:

“No F&O Clearing Member or person associated with a F&O Clearing Member shall make improper use of constituents securities or funds.”

Regulation 4.5.4 of the NCL F&O Regulations states as under:

“The Clearing Member shall not allow the utilization of margin monies paid by one client to the margin money dues of his own account or of other clients”

Further as seen in Para 20.3, the terms “Clients” / “Constituents”, include also the clients/ constituents of the Trading Members for whom the Clearing Member undertakes the clearing of trades. Therefore, the Committee observes that the Noticee has clearly violated the provisions of NCL Regulations.

- 24 The Noticee’s contentions that no law of SEBI purports the Noticee to be due diligent for the acts/ omissions of the trading member and fetches the CM vicariously liable for the acts and omissions of its Trading Member i.e. Yuvraj Securities is not acceptable due to the following reasons:-.

24.1 It may be noted that every clearing member is registered with SEBI under the SEBI (Stock Brokers) Regulations, 1992 (“SEBI Stock Broker Regulations”). The provisions of the SEBI Stock Broker Regulations which are applicable to a stock broker are also made mutatis mutandis applicable to a clearing member as stipulated in Regulation 10 F of the SEBI Stock Broker Regulations. The said Regulation 10 F stipulates that Chapters IV – General Obligations and Responsibilities; Chapter V – Procedure for Inspection and Chapter VI –

Procedure for Action in case of Default, which are applicable to a stock broker are also mutatis mutandis, applicable to a Clearing Member.

24.2 The Committee also notes that Regulation 26 (xiii) of Chapter VI of the said SEBI (Stock Brokers) Regulations states that a stock broker (and, therefore, a clearing member too as mentioned above), inter-alia, can be held liable for failure to segregate the securities or funds of a client or for using a client's funds or securities for the purposes of any other client.

24.3 Further, the Noticee being a Clearing Member is required to abide by the Code of Conduct, as prescribed in Schedule II of the SEBI Stock Broker Regulations. As per Regulation 9, any registration granted by SEBI under Regulation 6 of the Stock Broking Regulations is subject to one of the conditions that the stock broker shall at all times abide by the Code of Conduct as specified in Schedule II. Under clause A (5) of the said Code of Conduct, for Stock Brokers, 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.

24.4 It is, therefore, clear beyond doubt that there has been a violation by the Noticee of the aforesaid prohibitions relating to misuse of clients' securities on account of the sale of client securities without verifying whether such clients are defaulting clients having debit balances or not. Further, the Noticee's contention

that no law of SEBI purports the Noticee to be due diligent for the acts/ omissions of the trading member and fetches the CM vicariously liable for the acts and omissions of its Trading Member is not tenable in view of the aforesaid SEBI circulars and NCL Regulations which cast an obligation on all clearing members (which includes the Noticee) to ensure that there is no misuse of clients' securities.

25 The Noticee's contention that the Noticee had been tarnished on the basis of a presumptive theory which is evident from the content of para 5 of the SCN which states that "*...noticee ought to have ascertained which clients the securities belonged to and whether there were any debit balances for the said clients before liquidation of securities*" and hence in absence of specific bye-laws Noticee cannot be held vicariously liable for the trading Member's is fallacious and frivolous. The Committee notes that the Noticee has executed the Clearing Member Trading Member agreement with Yuvraj as below:-

- i. Clearing Member Trading Member in Currency Derivatives agreement dated February 15, 2018.
- ii. Clearing Member Trading Member in Futures & Options agreement dated February 15, 2018.

Clause 2 (10) of the Clearing Member-Trading Member agreement dated February 15, 2018 ("CM-TM Agreement"), clearly stipulates that "*.....the Clearing Member shall be entitled to collect such information from the Trading Member about the Trading Members constituents as the Clearing Member may require including the information*

pertaining to constituents positions.” Therefore, the Noticee was contractually enabled to call for and get the details of the clients.

The Committee further notes that in all the instances where Yuvraj has instructed the Noticee to sell off the shares, by virtue of the information being available to the Noticee through weekly upload to NCL, the Noticee was aware that the collateral posted by Yuvraj with the Noticee consisted of a mix of client and proprietary securities, in spite of that the Noticee has knowingly sold off the client securities. Therefore, the Noticee’s contention that it had complied with the NCL circular NCL/COMP/41068 dated 20.05.2019, by uploading client wise information on the NCL system as provided by Yuvraj Securities from time to time and dealt with the liquidating procedure towards the collateral, in accordance with SEBI / Exchange guidelines is not acceptable.

The Committee further noted that while the value of client securities sold by the Noticee as mentioned in the SCN was Rs. 1,39,38,978.80, post reconciliation of the same by Exchange and after considering the end clients’ obligations, the value of client securities sold by the Noticee amounts to Rs. 75,74,712.08.

The Committee, therefore, notes that the contentions of the Noticee are not tenable and the Noticee has, indeed, violated circulars/directives of SEBI/NSE and the Regulations of NCL, as stated in the Show Cause Notice.

DECISION

26 On an overall appreciation of the facts in the present case, the Committee observes that the Noticee was aware that the collateral posted by Yuvraj consisted of a mix of client shares and proprietary shares. The Committee observes that the Noticee has failed to perform adequate due diligence while handling client securities and that clients' securities were misutilised. It is, therefore, in contravention of Clauses 1 and 2 read with Clauses 3(1)(b) and 3(1)(c) of the NCL F&O segment Rules since the said conduct of the Noticee is not only improper but also violative of securities laws governing the activities, business and operations of the Noticee as a Clearing Member as stated above. Such a conduct is unbecoming of a Clearing Member and inconsistent with fair and equitable principles. The Noticee, thus, clearly violated circulars/directives of SEBI/NSE/NCL and the Regulations of NCL, as stated in the SCN.

27 Therefore, given the facts and circumstances of the present case, it would be just and proper for the Noticee to reinstate the securities wrongfully disposed of as detailed in the SCN. The details of securities sold is given in Annexure A.

28 Accordingly, the Committee, in the interest of justice, equity and good conscience and to protect the interests of the investors and maintain the integrity of the securities markets, directs the Noticee to reinstate the securities mentioned in Annexure B. The securities referred to in Annexure B have been derived on the basis of the information submitted by the Noticee of the securities sold under Annexure A and correlating the

same with the information uploaded by the Noticee to NCL for the dates of sale with respect to client securities amounting to Rs. 75,74,712.08. The said securities contained in Annexure B are to be reinstated within a period of fifteen (15) calendar days from the date of receipt of the order to failing which, an amount equivalent to the value of the securities as on the 16th day (as at the end of day / closing price on NSE, or BSE if NSE prices are not available) plus a mark-up value of 5% shall be blocked from the available collateral of the Noticee with NCL from the date of expiry of the aforesaid period of 15 days till the Noticee confirms compliance with this direction. For the purpose of this order, the term “reinstate” shall mean that the Noticee shall buy the same quantity of the same securities from the market or use out of its own unencumbered holdings.

29 The Noticee is further directed to credit the reinstated securities to a new identifiable beneficiary demat account of the Noticee to be dealt with appropriately for restitution to the clients in accordance with the directions of NSE. Details of such demat account shall be provided to NSE and NCL. The Noticee shall provide the demat account holding and transaction statement to NSE and NCL as and when called for. The Noticee shall not create any encumbrance on the securities held in such demat account directly or indirectly.

30 The Committee, considering the overall facts and circumstances of the present case, observes that the Noticee failed to comply with the provisions of the SEBI Circulars as well as NCL Regulations pertaining to misuse of clients’ securities. Such action

of the Noticee runs counter to the overarching principle of maintaining the integrity of the settlement system of the capital market. It is noted that NCL has issued circular dated August 13, 2021 on Uniform Penalty Structure for Clearing Members and a penalty of Rs. 1,00,000 (Rs. One lakh) or 1% of the amount involved, whichever is higher, has been prescribed for use of TM/CP funds/securities for other than specified purposes/Use of TM/CP funds /securities for own purpose / for other clients. However, the aforesaid penalty is applicable for inspections commenced on or after the date of the circular and, therefore, the same may not be made applicable in the present case. It is, however, noted that a penalty of Rs. 1,00,000 (Rs. One lakh) or 1% of the amount involved, whichever is higher, has been prescribed by NSE, vide circular no. NSE/INSP/36248 dated November 06, 2017, for use of client funds and securities/commodities for other than specified purposes / use of client funds for own purpose / for other clients. NCL, vide Circular No. NCL/CMPL/44976 dated July 10, 2020, has prescribed similar penalty structure for pledging client/TM securities lying with CM to the banks/NBFCs or any other persons/entities for raising funds. Therefore, the penalty to be levied at this point of time in this matter may be based on the similar penalty structure available to NSE/NCL for misuse of client securities. The ascertainment of the quantum of client securities misused is the basis on which the ad-valorem penalty is arrived at. In cases where the quantum of client securities misused is unascertainable at the time of levy of penalty, the exact quantum of client securities misused will be based on the outcome of the scrutiny to be carried out by NSE in such cases. The imposition of penalty in such cases at advalorem rate is not feasible and, therefore, the minimum penalty of Rs. 1,00,000 is leviable. However, in the present case the exact quantum of client securities misused has been

ascertained as per Annexure B. Therefore, penalty of Rs.1,00,000/- could be considered in addition to restitution of securities as ordered above (1% of Rs. 75,74,712.08 i.e. Rs 75,747.12/- or Rs.1,00,000/- whichever is higher). Hence, a penalty of Rs 100,000/- (Rupees One lakh only) is levied on the Noticee. This penalty shall be payable by the Noticee within a period of 15 days from the date of this order. In case the Noticee fails to pay the aforesaid penalty, the said amount shall be recovered from the available collateral of the Noticee with NCL from the date of expiry of the aforesaid period of 15 days.

Sd/-

Sd/-

Sd/-

Sd/-

Bhagyam Ramani

Harun R Khan

N K Maini

Vikram Kothari

(Chairperson)

(Committee Member)

(Committee Member)

(Committee Member)

Due to COVID situation, the Committee has given confirmation on email instead of physical signatures

Date: December 7, 2021