Before the

MEMBER AND CORE SETTLEMENT GUARANTEE FUND COMMITTEE

Of

NSE Clearing Limited

Exchange Plaza, Bandra Kurla Complex, Bandra East, Mumbai – 400051

held through Video Conference

In the matter of Professional Clearing Member

M/s Yes Bank 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:

Mr. Dhawal Shah - Head - Compliance

Ms. Jinal Shah - Chief Manager

Ms Shivani Dalvi – Chief Manager

Ms. Divya Potdar- Manager

Invitee:

Mr. Ravindra Bathula – General Counsel, NCL

I. BACKGROUND

1. Yes Bank Limited ("**Noticee**"), having its registered office at 15th Floor, Yes Bank Tower, IFC 2, Elphinstone Road (W) Mumbai – 400013, is registered as a Professional Clearing Member (PCM) with NSE Clearing Limited ("**NCL**") (SEBI Registration No. INZ000263944).

2. NCL conducted a Limited Purpose Inspection ("**LPI**") of the Noticee's books, registers, records and other relevant documents in the Futures & Options (F&O) and Currency Derivatives (CD) segment with respect to the Noticee covering the period from January 01, 2020 to March 31, 2020.

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 January 19, 2021: -

A. Findings

(i) The Noticee executed Clearing Member-Trading Member Agreement (CM-TM Agreement) on May 11, 2019 in Futures & Options Segment and Currency Derivatives segment with Action Financial Services (I) Limited (Action) for providing clearing services.

(ii) During LPI, data was sought from the Noticee to ascertain if there was any sale of securities of clients of Action by the Noticee. In response to a query on liquidation of securities, the Noticee has submitted the details. Extracts from the submissions made by the Noticee are as below: -

> *On account of market conditions and since the Trading Members positions/margin utilizations was above 85%, the Trading Members trading terminal on the NSE F&O segment was also put under RRM/disabled by NSE, for most of the day i.e. March 12, 2020*
>
> *March 13, 2020 at the start of the trading hours the Trading Member had not arranged for necessary collateral and therefore the Clearing Member continued to follow up with the Trading Member.*
>
> *In spite of Trading Member squaring off the partial positions, margin utilizations of the Trading Member at end of day on March 13, 2020 was still at 91%. Since the Trading Member did not bring in sufficient collateral, the Trading Members terminal continued to be under RRM/disabled throughout the day.*
>
> *The partial positions squared off by the Trading Member had resulted into huge losses and total Mark to Market (MTM) pay-in at the end of day on March 13, 2020 was Rs. 3,35,15,477.75*
>
> *On March 16, 2020, considering the overall situation and huge losses/outstanding in the Trading Members account with the Clearing Member, the Trading Member was put in RRM before the market hours.*
>
> *The Trading Member delayed the pay-in and the MTM pay-in of Rs. 3,35,15,477.7 on March 16, 2020*
>
> *On March 17, 2020, in spite of the Clearing Member following up with the Trading Member throughout the day, the Trading Member did not unwind any of its proprietary position. On March 18, 2020, the Trading Member did not unwind any of its proprietary positions. The Trading Members margin utilization at the end of the said day was 103.33%*
>
> *On March 19, 2020, the Trading Member in spite of its specific assurance to the Clearing Member squared off only some of its F&O proprietary positions by 3.30 pm and the margin utilizations of the Trading Member at the end of day was still at 101.6%.*
>
> *On March 23, 2020, after repeated follow-ups and reminders, the Trading Member squared off all its proprietary positions resulting in a MTM pay-*

in of Rs. 7,80,28,966.25

On March 24, 2020 entire day the Trading Member did not bring in any funds. Since the Trading Member did not clear the outstanding by end of the day, the Clearing Member was compelled to liquidate the collateral provided by the Trading Member and accordingly invoked the Bank Guarantee of Rs. 6.05 Crores provided by Bank of India.

On March 25, 2020, the Clearing Member once again enquired with the Trading Member regarding the funds and the Trading Member kept giving false assurances that they are still expecting funds. Considering the fact that the Trading Member had already defaulted, the Clearing Member liquidated the collateral shares provided by the Trading Member and realized an amount of Rs. 1,98,90,358.76

It was observed that there was a pay-in obligation of Rs.7.80 Crs on account of Net Buy Premium payable by Action to the Noticee on March 23, 2020. Noticee, in its own submissions, had admitted that the obligation of Rs 7.80 Crs arose out of proprietary positions created by Action. Further, as per Noticee's submission, in order to recover the outstanding balances, of March 23, 2020, the Noticee invoked BG of Rs.6.05 Crs and sold securities worth Rs 1.99 Crs on March 25, 2020.

In order to determine the due diligence carried out by the Noticee to ascertain whether there were debit balances in client account before liquidating the securities, the following information was sought.

a. *Communication between the Noticee and Action 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 Action in this regard.*

(iii) The Noticee provided the information regarding ISIN, Scrip Name, Quantity and Amount of securities sold referred to in Annexure A. However, with respect to information on the details for which client the securities have been sold and whether there were debit balances for such clients, the Noticee responded as under:

Client Code & Client ledger balance information:

- *As clearing member, CM neither has any relationship with end clients of TM nor any trading limits are provided by the CM to the clients of TM.*
- *As per the Exchange guidelines, a clearing member is also not required to collect such details about the clients of TM.*
- *Accordingly, the CM has no system/ mechanism to identify the end clients of the TM and has not entered into any agreement with the end clients of the TM.*
- *The end clients may be having positions in various segments (equity, currency and F&O) with the TM and may have submitted to TM collateral deposits in various forms across different segments.*
- *Hence, it is not possible for CM to identify net debit/credit on account of fungibility allowed by TM to its clients between segments.*
- *Onus of providing correct information in this regard for regulatory submission lies with the TM.*
- *It is the responsibility of the TM to ensure that securities provided by its end clients are not provided as collateral to CM for securing the obligations of TM.*

On the basis of the above submissions, the Noticee did not provide client codes for the securities disposed of.

(iv) The Noticee is required to upload details of Trading Member wise - client wise securities details 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 Action for the period under review i.e. January 2020 to March 2020.

(v) Action had sent an email to the Noticee on March 19, 2020 wherein Action had provided a bifurcation of own and client securities.

(vi) As per details uploaded by the Noticee to NCL for Action, value of securities for the period March 19, 2020 to March 23, 2020 was as under:

Amount in Rs

Date	For account Type-Own	For account Type-Client
19-03-2020	2,22,69,058	2,79,68,399
20-03-2020	3,53,310	3,51,60,289
23-03-2020	4,98,220	2,82,22,959

From the above table it was observed that there is a reduction of value of shares from Rs. 2,22,69,058 on March 19, 2020 to Rs. 3,53,310 on March 20, 2020 for own account shares. As per the Noticee's submission, Action asked for release of own shares from the Noticee on March 20, 2020. Hence, the Noticee was aware and released proprietary shares to Action.

(vii) From the email dated March 19, 2020 and March 20, 2020 and the above reporting uploaded by the Noticee to NCL, it was observed that Rs. 1.95 Crs of securities were of clients of Action out of total sale of securities of Rs. 1.99 Crs. Noticee was, therefore, aware that securities provided by Action as collaterals were belonging to the clients.

(viii) Despite having the information from Action regarding shares belonging to the clients and the loss pertaining to own obligations of Action, the Noticee sold securities belonging to clients of Action on March 25, 2020.

(ix) From the above, it is concluded that the 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, the Noticee failed to identify the client securities which were being sold by not corelating them with those of the defaulting clients. In the facts of the present case, the Noticee had sold off securities not belonging to Action i.e. the Noticee has sold off client securities for meeting the outstanding dues of Action arising out of the proprietary trades of Action. Therefore, in view of the abovementioned findings, it is observed that the Noticee had failed to comply with the below mentioned

SEBI/NSE Circulars and NCL Regulations. The Noticee has wrongly appropriated the securities of clients towards the proprietary dues of Action despite being fully aware that the securities belonged to the clients of Action.

B. Violations observed

(i) It was observed that the Noticee had violated the following Circulars / Regulations of the Securities and Exchange Board of India ("**SEBI**") / NCL:

a) 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**");

b) SEBI Circular no. MRD/DOP/SE/Cir-11/2008 dated April 17, 2008 ("**2008 SEBI Circular**');

c) NSE Circular no. NSE/INSP/2008/66 dated April 21, 2008 ("**2008 NSE Circular**"); and

d) Regulation 10.2.4 of the NCL F&O Segment Regulations ("**NCL Regulations**").

III. Show Cause Notice: -

4. A Show Cause Notice dated January 22, 2021 ("**SCN**") was issued to the Noticee calling upon it to show cause 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 against the Noticee for the non-compliances / violations as 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 SEBI Circular No MRD/DoP/SE/Cir-11/2008 dated April 17, 2008, NSE Circular No NSE/INSP/2008/66 dated April 21, 2008, SEBI Circular No CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019 and Regulation 10.2.4 of NCL F&O Regulations respectively.

5. In terms of the SCN, the Noticee was also provided an opportunity of personal hearing before the Member and Core Settlement Guarantee Fund Committee of NCL ("**Committee**") on February 18, 2021. The Noticee furnished its reply to SCN, vide its letter dated February 05, 2021 ("**Reply**") and written submissions vide its letter dated February 23, 2021 **("Written Submissions")**. The Noticee, through its authorized representatives, appeared for the personal hearing before the Committee on February 18, 2021.

6. At the personal hearing before the Committee held on February 18, 2021, the Noticee was represented by Mr Arun Agrawal – Senior Group President, Mr Parakram Jadeja – Sr President, Mr. Nagesh Srivastava – President, Mr. Kumar Medhavi - Executive Vice President, Ms. Priyanka MP - Assistant Vice President, Mr. Naveen Surana - Senior Vice President, Mrs. Archana Choudhary - Vice President, Mr. Dharmil Ajmera - Asst. Vice President, Mrs. Gunjan Kataruka – Manager and Mr. Deepak Dhane - Advocate.

IV. Submissions made by the Noticee

7.1 Submissions with respect to information sought by the Noticee from NCL

7.1.1 Noticee's Submission: - The Noticee vide email dated February 02, 2021, had sought copies of the documents referred to and relied upon by NCL at the time of conducting the Limited Purpose Inspection including the Inspection Report. The Noticee further submitted that vide email dated February 04, 2021, NCL had responded with a copy of only the Inspection Report and several other documents sought vide email dated February 02, 2021 had not been provided.

7.1.2 Findings of the Committee in respect of information sought by the Noticee from NCL

The Noticee had sought the following details from NCL: -

a. Copy of Inspection Report.

b. Copies of documents referred and relied on by NCL in preparing the Limited Purpose Inspection/Inspection Report.

c. Copies of all communications exchanged between NCL and Action Financial Services Limited (Action) and responses, if any, including enclosures to such communications.

d. Copies of all communications exchanged between NCL, SEBI and BSE in connection with the captioned matter involving Action, including enclosures to such communications.

e. Copies of internal noting(s)/record(s)/document(s) etc. of NCL which resulted in issuance of SCN to the Noticee.

f. Such other document(s), writing(s) etc. which would be relevant for the above proceedings.

The Committee noted that a response was given to the Noticee vide email dated February 04, 2021, providing the Limited Purpose Inspection Report to the Noticee. The Noticee was also informed that the Inspection Report was prepared on the basis of information furnished by the Noticee. The Committee noted that the Letter of Observation was shared with the Noticee detailing the violation(s) observed upon the completion of inspection. The Noticee was also informed that the other information sought by the Noticee in its email were not relevant for the purpose of responding to the SCN and all the documents relevant for the SCN have been provided to the Noticee. Therefore, the Committee observes that the request for the various documents made by the Noticee is, thus, in the nature of a fishing and roving enquiry.

7.2 Submissions with respect to liquidation of shares as per the terms of the Agreement

7.2.1 Noticee's Submission:- The Noticee's act to liquidate the shares provided by Action was as per the terms of the Agreements and Transaction

Documents dated May 11, 2019 entered between the Noticee as a Clearing Member and Action and the Undertaking dated August 19, 2019 issued by Action to the Noticee. In support of its submissions, the Noticee had quoted the following clauses from the Agreements referred to in its Reply:-

> *"Collateral" shall mean the Deposits, the Base Minimum Capital, Securities and any other collateral, margin or security, including fixed deposits and bank guarantees, furnished by the Trading Member to the Clearing Member for procuring the provision of the Services* as *per the terms of Transaction Documents.*
>
> *The Securities in existence are owned by the Trading Member and are and shall be free from any charge, lien or encumbrance, whether prior or otherwise.*
>
> *The Trading Member hereby declares that the Securities which have been transferred to the Designated Account of the Clearing Member are free, and shall continue to be free, from any charge, lien, interest, lock-in or encumbrance of any nature whatsoever.*
>
> *The Trading Member agrees and confirms that the Clearing Member has the right to* sell, *liquidate, invoke, transfer, encumber,* dispose, *encash or* set *off and/ or otherwise adjust all or any amounts that are due to it or the Clearing Corporation/ Exchange from the Trading Member.*
>
> *The Trading Member agrees and confirms that the Clearing Member/ Clearing Corporation/ Exchange have the absolute right to* sell, *liquidate, invoke, transfer, encumber, encash,* set *off and/ or otherwise* dispose *of any collateral/ Securities or Deposits or any other margin/ deposits provided by the Trading Member, to recover any outstanding dues/ amounts payable by the Trading Member.*
>
> *The Clearing Member shall at all times without assigning any reason have the right to call upon the Trading Member to deposit additional amounts or margin towards IM*

deposit or MTM deposit, and the Trading Member shall b obliged to forthwith comply with such requirement.

The Clearing Member has a right to sell, liquidate, invoke, transfer, encumber, dispose, encash and set off and/ or otherwise adjust all or any amounts that are due to it or the Clearing Corporation/ Exchange from the Trading Member against any collateral received from the Trading Member.

The Clearing Member has the absolute right to sell, liquidate, invoke, transfer, encumber, encash, set off, and / or otherwise dispose of any Collateral/ Securities or Deposits or any other margin/ deposits provided by the Trading Member to recover any outstanding dues/ amounts payable by the Trading Member .

The Clearing Member shall specify, subject to the requirements prescribed by NSE Clearing Limited from time to time, the exposure limits upto which open positions can be taken by Trading Member. Such limits may be increased or reduced by the Clearing Member from time to time. The Clearing Member has the authority to initiate any action necessary to protect its/ his interests in this regard which may, inter alia, include restriction on further trading and close-out of open positions of the Trading Member or withdrawal/ disablement of trading facility of the Trading Member by making necessary requests to NSEIL/ NSE Clearing Limited for initiating such action.

The Clearing Member would have the exclusive right to refuse the withdrawal/ release of any Collateral placed by the Trading Member, if the balance Collateral is inadequate to cover the margin requirement of the Trading Member and if there are any dues of the Clearing Member are outstanding or reasonably expected to arise.

(Emphasis supplied and clause referred to in Para 7.2.2 below)

The Trading Member shall not make any claims or demands for refund or any reimbursement in relation to the Securities.

On the basis of the above clauses, the Noticee contends that Action was under obligation to provide collaterals to the Noticee to cover the Noticee against any risk from non-settlement of trades by Action. The Noticee further contends that Action has transferred shares from the DP account held with NSDL to the DP Pool account of the Noticee. On the basis of Clause (i) of the Addendum Undertaking dated August 19, 2019, Action represented that the collateral in the form of securities so placed are its own and free from any locking restriction, charge, lien, trust or other encumbrances and attachments and there is no agreement or commitment to give or create the same in favor of any person. The Noticee further contends that the securities sold were sold by it pursuant to rights granted to it under the said agreements referred to in its Reply. It was further submitted by the Noticee that where an obligation is cast on a party and he/she commits a breach of such obligation, he/she cannot be permitted to take advantage of such situation based on the Latin maxim 'Commodum ex injuria sua nemo habere debet' (No party can take undue advantage of his own wrong). Further, the Noticee contended that Action was trying to take advantage of its own misdoings i.e. encumbering the end clients' securities towards margin requirements and that the principles of contributory negligence will not come to the rescue of Action.

7.2.2 **Findings of the Committee in respect of liquidation of shares as per Agreement**

The Committee has noted that the contentions raised by the Noticee are based on fallacious premises and hence rejects the same for the following reasons: -

(a) The Committee notes that the Noticee has quoted various clauses of the Agreements and Undertakings (referred to as "Transaction Documents" by the Noticee in its Reply) entered between the Noticee and Action. In this regard, the Committee notes that the Noticee has executed the following documents with Action: -

i. TM-CM Agreement for F&O and CD segments dated May 11, 2019
ii. Clearing & Settlement Agreement dated May 11, 2019
iii. Undertaking with respect to Clearing & Settlement Agreement dated May 11, 2019
iv. Addendum Undertaking with respect to Clearing & Settlement Agreement dated August 19, 2019.

(b) Before dwelling further, it is pertinent to note that the short point which calls for the consideration of the Committee is whether the entire collateral posted by Action with the Noticee (liquidated by the Noticee on March 25, 2020) consists only of proprietary shares or whether it consists of a mix of proprietary and client shares.

(c) Vide email dated March 16, 2020, being Annexure C to the Reply, the Noticee while replying to the request of Action for starting of its terminal subsequent to disablement, clearly stated that the Noticee did not want

either the clients of Action nor the Noticee nor Bank of India to face any kind of risk and further stated that the Noticee shall release the shares of Action when the Noticee has adequate cushion of Action shares and not client shares and, therefore, requested Action to put additional collateral. The Noticee further recorded in the said email that there was a risk arising out of the position of Action and, therefore, stated that if Action cannot unwind and manage its positions, the Noticee shall square up the positions and resultant consequences shall follow.

(d) The Committee further notes that, vide its email dated March 18, 2020 to Action, the Noticee had recorded that Action had indicated its willingness to offload the shares provided as collateral to the Noticee and requested the Noticee to liquidate the same through some other broker. The Noticee recorded that the majority of the shares are proprietary shares and Action has provided its consent to the Noticee to sell shares pertaining to its own proprietary account. Therefore, vide the said email, the Noticee had while sharing the complete list of shares provided as collateral, requested Action to provide the bifurcation of shares pertaining to Action's proprietary account.

(e) On receiving the list from Action, the Noticee further recorded that it shall initiate liquidation of those shares and Action shall indemnify the Noticee against issues/disputes arising out of liquidation of shares.

(f) In view of the statements contained in the aforesaid two emails viz March 16, 2020 and March 18, 2020, it is clear that the collateral posted by Action with the Noticee consisted of a mix of client shares and proprietary shares and, therefore, being aware of such mix, the Noticee has requested Action to provide a confirmation of the proprietary shares in order to liquidate the proprietary shares to meet the obligations of Action arising out of its proprietary trades. Therefore, it is not open for the Noticee to contend that the entire collateral consisted of only proprietary shares since if that were the case, there was no need for the Noticee to seek bifurcation of the collateral posted by Action in order to identify the proprietary shares to be liquidated. The Committee notes that Action has accordingly given the bifurcation of shares, vide its email dated March 19, 2020.

(g) As stated in the SCN as well as in the LPI report, Action had requested for the release of proprietary shares on the basis of the bifurcation given, vide its email dated March 19, 2020. While providing the bifurcation of own and client shares out of the collateral posted by Action with the Noticee, Action had informed the Noticee to sell only its proprietary shares lying with the Noticee in case of a pay-in default on March 20, 2020. On the basis of the bifurcation provided, Action had requested the Noticee to release only proprietary shares, vide its email dated March 20, 2020 and accordingly, the Noticee had also released the proprietary shares. From this record, it can be seen that initially Action requested

Noticee to sell its proprietary shares but later on requested the Noticee to release the proprietary shares instead of liquidating them. The Noticee acted imprudently by selling the client securities and releasing the proprietary shares. In view of the aforesaid action, it is untenable for the Noticee to contend that the entire collateral consisted only of proprietary shares on the strength of clause (i) of the Addendum Undertaking dated August 19, 2019.

(h) The upload of collateral information posted by Action with the Noticee clearly contained a bifurcation of the proprietary and client shares posted as collateral along with the details of such shares as required in accordance with the circular of NCL dated May 20, 2019. As may be seen from the SCN, prior to the release of proprietary shares on March 20, 2020, on March 19, 2020 the value of own account shares was Rs.2,22,69,058 (1,47,460 quantity of shares) and the value of client account shares was Rs.2,79,68,399 (2,76,049 quantity of shares).Therefore, it is untenable for the Noticee to contend that the entire collateral consisted of only proprietary shares as is being sought to be done now apparently as an after thought. The Committee observes that, the shares reported for client type for March 23, 2020 were reported by the Noticee for Action in own account type for March 24, 2020 and accordingly explanation was sought from the Noticee by NCL vide its email dated January 15, 2021. The Noticee, in response vide its email dated January 15, 2021, confirmed that Action did not submit the weekly

securities holding bifurcation file for the period March 24, 2020 to March 28, 2020 to the Noticee. The submission to Exchange was due on April 02,2020. Since the file was not provided by Action, all the securities were reported under Action's own account in the absence of UCC details for March 24, 2020. Therefore, the Committee observes that the Noticee by its own admission has stated that the client shares were uploaded to NCL as proprietary shares in the said upload dated April 02, 2020 which the Noticee ought not to have done.

(i) In view of the above, the reliance of the Noticee on the clause (i) of the addendum undertaking to contend that the entire collateral belonged to Action is undone by the Noticee's own conduct in (a) seeking the bifurcation of proprietary and client shares vide its email dated March 18, 2020, (b) releasing the proprietary shares pursuant to the request by Action and (c) reporting of the bifurcation of the collateral to NCL in the weekly upload.

(j) The Committee observes that while the Noticee relied upon Clause (i) of the Addendum Undertaking to contend that all the securities posted as collateral are owned by Action, it is also observed that in terms of the Undertaking being Annexure 1 to the CM TM Agreement and the Clearing & Settlement Agreement, the provisions of Clause 4 of the said undertaking do not support such contention. The Committee observes

that under Clause 4, it has been stipulated that in respect of securities which belong to the constituents of the trading member (Action), such securities are owned by the constituents of Action. The Committee , therefore, observes that while highlighting the clauses, the Noticee has not referred to the Clause 4 of the aforesaid Undertaking which specifically deals with securities belonging to the constituents of the Trading Member.

(k) As regards the contention of the Noticee that bifurcation of securities provided by Action was unreliable, the Committee notes from the facts of the present case that there is a bifurcation of the collateral posted by Action in terms of client shares and proprietary shares which was made available by Action to the Noticee, vide its email dated March 19, 2020. As stated earlier, Action had requested the Noticee to liquidate only the proprietary shares vide its email dated March 19, 2020 and then vide its email dated March 20, 2020, had requested the Noticee to release the proprietary shares based on the bifurcation provided by Action. The Committee further observes that the Noticee has acted on the request of release by Action. It is, therefore, not tenable for the Noticee to contend in hindsight that the bifurcation provided by Action is not reliable.

(l) As regards the reason cited by Action for the release of the collateral it was ostensibly to enable Action to meet its pay in obligation on March

23, 2020 in the equity segment for the shares sold by it because Action had availed of a temporary overdraft from Bank of India to meet its pay in obligation in F&O segment on March 23, 2020. The Committee observes that the Noticee in its email dated March 18, 2020, clearly stated that the Noticee would liquidate the proprietary shares supporting the proprietary account. The Committee however observes that instead of liquidating the proprietary shares, the Noticee released the proprietary shares to Action. This conduct of the Noticee in releasing the shares belies prudent risk management policy. It is an accepted position that the trading terminal of Action had been disabled and Action had been put in RRM i.e. Risk Reduction Mode and the position of Action was risky as stated in the Noticee's email dated March 16, 2020. In such a situation, the Committee observes the proprietary shares, which should have been sold to meet the obligations of the proprietary trades of Action, were actually been released by the Noticee. Even in terms of Clause VIII (i) of the Clearing & Settlement agreement referred to by the Noticee, the Noticee ought to have refused the withdrawal/release of collateral placed by Action on account of the risky position of Action. The clause is reproduced for easy reference hereinbelow: -

> ***(i) The Clearing Member would have the exclusive right to refuse the withdrawal/ release of any Collateral placed by the Trading Member, if the balance Collateral is inadequate to cover the margin requirement of the Trading Member and if there are any dues of the Clearing Member are outstanding or reasonably expected to arise.***

(m) In view of the above, it is abundantly clear that the Noticee was fully aware of the bifurcation of proprietary and client shares and, therefore, it is untenable for the Noticee to contend that the entire collateral shares consisted of proprietary shares of Action. Further, after releasing the proprietary shares it is evident from the records that virtually the Noticee would be left with client shares. Having released the proprietary shares on March 20, 2020, it leads to an inevitable conclusion that on March 25, 2020, the Noticee was fully aware that it had client securities and ,therefore, it is not open for the Noticee to contend that the shares in question were proprietary shares of Action. On the basis of the above facts, the Committee concludes that the Noticee was fully aware that the collateral posted by Action consisted of both proprietary and client shares. It is an admitted fact by the Noticee that the outstanding dues were arising out of proprietary positions of Action and that post default by Action, the Noticee disposed of securities worth Rs. 1.99 Crs approximately.

(n) In this context, the contention of the Noticee that Action cannot be permitted to take advantage of its own wrong doing is not relevant since the proprietary shares were available with the Noticee and the Noticee could have liquidated the proprietary shares supporting the proprietary account. However, because the proprietary shares had been released

despite being fully aware that the balance shares are predominantly client shares, the Noticee had utilized the same for meeting the proprietary dues of Action. Further, the Noticee contended that Action was trying to take advantage of its own misdoings i.e. encumbering the end clients' securities towards margin requirements and that the principles of contributory negligence will not come to the rescue of Action. In this regard it may be noted that despite being fully aware that the proprietary shares were supporting the proprietary account of Action, not only had the Noticee released the proprietary shares but also knowingly disposed of the client shares for meeting the outstanding dues of the Noticee arising out of the proprietary trades of Action. Therefore it is the Noticee which is trying to take advantage of its own mis doings since it is incumbent upon the Noticee to do due diligence to ensure that client securities are not used for meeting the obligations arising out of proprietary trades which the Noticee had failed to do.

(o) In the facts of the present case, it is:

i. unequivocally admitted by the Noticee that it has released proprietary shares of Action and, therefore, by necessary implication was left with predominantly client shares out of the mix of proprietary and client shares posted as collateral by Action.

ii. unequivocally admitted by the Noticee that it has liquidated securities worth Rs 1.99 Crs on March 25, 2020;

iii. also not disputed by the Noticee that such liquidation / sale of securities was for recovery by the Noticee of the proprietary trading dues of its Trading Member Action;

iv. also established that as per the details uploaded by the Noticee itself to NCL, the securities sold by the Noticee belonged to clients of Action;

(p) 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 for recovering the proprietary trading dues of the Trading Member Action to the Noticee.

7.3 Submissions with respect to Noticee's relationship with end clients of Action

7.3.1 Noticee's Submission:- As a clearing member, the Noticee neither has any relationship with end clients nor are any trading limits provided by the Noticee to the end clients of Action. Accordingly, the Noticee has no system/ mechanism to identify the end clients of Action or verify if collateral provided by Action in the form of securities belongs to end clients or not and, neither the same is the responsibility of the Noticee. It is the sole responsibility of Action to ensure that securities provided by its end clients are not provided as collateral. It was submitted that as a Clearing Member (CM), the Noticee's job was to report the collateral to NCL and on the basis of which NCL had prescribed the exposure limits from time to time. In fact, NCL/NSE was always in a position to identify

whether the positions taken by Action were proprietary or its clients. As a CM, it was impossible for the Noticee to identify or monitor the same on a real time basis.

7.3.2 Findings of the Committee in respect of the Noticee's relationship with end clients of Action

The Committee has noted that the contentions raised by the Noticee are based on fallacious premises and hence, rejects the same for the following reasons: -

i. The Noticee's contention that the Noticee does not have any relationship with the end clients of Action is belied as Regulation 1.7 of the NCL F&O Segment Regulations clearly explains that as regards a Clearing Member, the terms "Clients" / "Constituents", include all registered constituents of trading members of Specified Exchange. Thus, it is abundantly clear that the term "clients" for a clearing member also covers the clients of trading member.

ii. The Noticee's contention that the Noticee does not provide trading limits to the end clients of Action is not relevant to the facts of the present case.

iii. The Noticee's contention that there is no system/mechanism to identify end clients of Action in the form of securities belongs to end clients or not is incorrect as the Noticee is required to collect information from Action in accordance with NCL circular dated May 20, 2019.

iv. Clause 2 (10) of the Clearing Member-Trading Member agreement dated May 11, 2019 ("CM-TM Agreement"), relied on by the Noticee itself, 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. In fact, the Noticee vide its email dated March 18, 2020, had shared complete list of shares provided as collateral requiring Action to provide the bifurcation of shares pertaining to Action's proprietary account. Accordingly, vide its email dated March 19, 2020, Action had provided a bifurcation of proprietary and client shares. More importantly, vide its email dated March 16, 2020, the Noticee itself had stated that it did not want either the clients of Action, nor the Noticee itself nor Bank of India to face any kind of risk and therefore, stated that the Noticee would release proprietary shares when they have adequate cushion of Action shares (proprietary shares) but not client shares. However, it is observed that the proprietary shares were released by the Noticee without adequate cushion of proprietary shares and the client

shares were knowingly disposed off wrongfully to meet the outstanding dues of Action arising out of its proprietary trades. Therefore, even though the Noticee has sought the bifurcation information, it had acted wrongfully despite having the bifurcation.

v. In so far as the submission by the Noticee that NCL/NSE was always in a position to identify whether the positions taken by Action were proprietary or its clients and as a CM, it was impossible for the Noticee to identify or monitor the same on a real time basis, it is observed that such contention is untenable since the Noticee as a CM is possessed of the information with respect to the client as well as the proprietary positions which it undertakes to clear and is also responsible for the meeting the margin requirements with respect to such positions. The information with respect to the clients and the proprietary position of trading members is provided to the CMs through the NMASS interface provided by NCL. Therefore, the client and the proprietary positions were in the knowledge of the Noticee.

7.4 Submissions with respect to Action's demat account from where securities were provided as collaterals

7.4.1 Noticee's Submission: - Action had provided the collateral shares from its own demat account to the demat account of the Noticee. The collateral shares transferred by Action to the Noticee were transferred under a

declaration by Action that the securities in existence are owned by Action and are and shall be free from any charge, lien or encumbrance. Therefore, Action expressly declared itself as a beneficial owner of the Collateral shares which it transferred from its own beneficial ownership Account to the Noticee. It is relevant to note the definition of the Beneficial Owner as per the Depositories Act, 1996 which is reproduced hereunder for immediate reference:-

> *2(1)(a) "beneficial owner' means a person whose name is recorded as such with a depository.*

Once the shares were transferred by Action from its Designated Demat Account to the Noticee's Designated Demat Account, alongwith a declaration that Action is the sole owner of the shares, the Noticee was not required or was not under any obligation to make any enquiries and the Noticee was therefore entitled to liquidate all the shares being collateral. The nomenclature of TM's Demat Account was "Action Financial Services (India) Limited" and the nomenclature of Noticee's Demat Account was "Yes Bank Ltd. Additional Base Capital". Only after SEBI implemented its circular on margin deposits, the Noticee had to open a separate Demat Account under the nomenclature "Yes Bank Client Collateral" and accordingly such an account was opened only in October 2020.

7.4.2 Findings of the Committee in respect of Action's demat account from where securities were provided as collaterals

The Committee notes that although the Noticee has repeatedly attempted to take the plea that it has received the securities collateral from the depository account of the Trading Member Action and has not received any collateral from the depository accounts of clients of Action, the contention of Noticee is untenable for the following reasons

(i) Pursuant to the regulatory directions of SEBI for segregation and protection of clients' securities, all TMs' have to hold clients' collateral shares in separate specifically designated client collateral demat account. In this regard, pursuant to SEBI 2019 circular, NSE had issued a circular dated September 27, 2019 (NSE/INSP/42229) addressed to all members, as Frequently Asked Questions (FAQ) on Handling of Clients' Securities by Trading Members/Clearing Members. Point 2 of the FAQ is as under:-

"In addition to the existing "Collateral Account", Members shall open a separate "Client Collateral Account" for the purpose of holding client securities for margin purpose or onward transfer to Collateral Account or for transferring to Clearing Members. Such securities shall be transferred to the "Collateral Account" for pledging with the Clearing Corporation or transfer to CM. Members shall obtain authorisation from the respective clients before pledging their securities with the Clearing Corporation or transferring it to CM."

(ii) The shares were transferred from Action's "Stock Broker Collateral Account" which necessarily holds shares provided by Trading Member and their clients. According to the Noticee itself, Action had reported to the Noticee that these securities were client securities and the Noticee had also reported these securities as client securities to the NCL. The contention of the Noticee is thus untenable as the Noticee was fully aware that the securities belonged to the clients as the Noticee itself uploaded trading member wise client wise securities details in accordance with NCL circular dated May 20, 2019.

(iii) Therefore, the Noticee's references to the provisions of the Depositories Act, 1996 is misconceived.

(iv) Clause 4 of the Undertaking with respect to Clearing & Settlement Agreement dated May 11, 2019 specifically deals with securities belonging to the constituents of the trading member.

(v) The Noticee had itself, vide email dated March 18, 2020, shared complete list of shares provided as collateral and sought bifurcation of shares for the proprietary account. Further, the Noticee in its email dated March 18, 2020, also stated that once the list is received from Action the Noticee would liquidate those shares. Action had sent an email to the Noticee on March 19, 2020 wherein Action had provided a clear bifurcation of own and client securities.

The Committee, therefore, observes that the Noticee's submissions are an afterthought, misleading and hence not acceptable.

7.5 Submissions with respect to non-applicability of circulars referred to in the SCN

7.5.1 Noticee's Submission: - None of the Circulars are applicable to the Noticee as a CM. The said Circulars prescribes the manner in which a Stock Broker /Trading Member is required to handle the clients' securities.

(1) As per para 6 of the SEBI Circular dated June 20, 2019, Stock Exchanges, Clearing Corporations and Depositories were directed to put in place a mechanism for monitoring with respect to handling of clients' securities. Further, the new monitoring mechanism was introduced in June 2020 but came into effect only in September, 2020.

(2) Pursuant to the Circular dated May 20, 2019, a provision for weekly reporting was introduced and accordingly the collateral reporting for March 23, 2020 was shared by Action with the Noticee only on April 1, 2020 (which is after a time lag of almost 10 days), which was further provided by the Noticee to NSE/NCL on April 2, 2020. There is a time lag of one week from the day Action has provided collateral securities to the Noticee and the subsequent breakup provided by Action to the Noticee.

(3) SEBI had issued a Circular dated February 25, 2020 which came into force only from September 1, 2020, whereby SEBI for the first time implemented its new Guidelines on "Margin obligations to be given by way of Pledge/Re-pledge in the Depository System'. It was submitted that the said Guidelines were introduced specifically to prohibit the TM's from misusing its clients' securities. This action of SEBI itself shows that at the relevant time when the Noticee accepted the shares as collateral from Action and thereafter when the Noticee liquidated the collateral shares on March 25, 2020, no such guidelines were in place.

7.5.2 Findings of the Committee in respect of non-applicability of circulars referred to in the SCN

The Committee rejects the said submissions of the Noticee for the following reasons:

(i) 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 TM, CM or PCM can be allowed to misuse any investors' / clients' securities. No TM, CM or PCM can be permitted to unilaterally sell off a clients' securities other than to recover the legitimate dues from the concerned clients. The Noticee had dealt with securities that were not belonging to Action and had wrongly appropriated the same towards the

proprietary obligations of Action despite being well aware that the securities belonged to the clients of Action.

(ii) The 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: -

4.1 *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.* ***Brokers should also maintain records to ensure proper audit trail of use of client collateral.."***

(Emphasis Supplied)

(iii) In addition, the 2008 SEBI Circular directed stock exchanges to bring the provisions of the 2008 SEBI Circular to the notice of, inter alia, clearing members. The 2008 SEBI Circular states, inter alia, as under:

> "5. *The Stock Exchanges are advised to: -*
>
> *5.1. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.*
>
> *5.2.* ***bring the provisions of this circular to the notice of the member brokers/clearing members,*** *depository participants and also disseminate the same on their website."*

(Emphasis Supplied)

(iv) 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"**.

(Emphasis Supplied)

(v) Consequently, it is untenable for the Noticee to contend that the aforesaid circulars are not applicable to the Clearing Members. The Committee unequivocally holds that the said circulars are applicable to all Clearing Members, including the Noticee.

(vi) Moreover, the Committee also notes that the provisions of the SEBI (Stock Brokers) Regulations which are applicable to a stock broker are also made, mutatis mutandis, applicable to a clearing member. As per Regulation 10 F of the SEBI (Stock Brokers) Regulations, 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 made, mutatis mutandis, applicable to a Clearing Member. The Committee also notes that the term Clearing Member is an inclusive term for Clearing Member as well as Professional Clearing Member.

(vii) The Committee also notes that Regulation 26 (xiii) of Chapter V 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.

(viii) The Committee notes that SEBI's circular dated February 25, 2020 highlights the importance of the need to ensure that there is no misuse of client securities and provides for an additional measure to mitigate the risk of misappropriation or misuse of clients' securities available with the TM / CM / DP, which is binding on all Clearing Members as well as Trading Members. These additional measures in no way absolved the Clearing Member of its responsibility to ensure that it did not sell off collateral securities of clients other than debit balance clients and that too only to the extent of their respective debit balances. The client collateral is not to be used for any purpose other than meeting the respective client's margin requirement for pay-in. Therefore, there is a prohibition as per the above referred circular in using the client securities for meeting the proprietary dues of Action.

(ix)The Committee notes that the contention of the Noticee in para 6 of 2019 SEBI Circular requires the Stock Exchanges, Clearing Corporations and Depositories to monitor the misuse of client securities by Clearing Members and Trading Members and observes that the responsibility to ensure that client securities are utilized for obligations of respective clients and not for proprietary obligations is cast upon the Trading Members and the Clearing Members and the monitoring referred to in the said paragraph is used in the context of the supervisory framework to be followed by the Market

Infrastructure Institutions to ensure that the market participants such as the Clearing Members adhere to and comply with the provisions of the aforesaid SEBI circulars.

7.6 Submissions with respect to Arbitration Award passed in favour of the Noticee

7.6.1 Noticee's Submissions:-Action had filed an Arbitration against the Noticee before the Arbitral Tribunal of NSE, with respect to the transactions which are subject matter of the present SCN and the Arbitral Tribunal vide its Award dated January 30, 2021 had rejected all the claims made by Action against the Noticee.

In the Arbitration proceedings, it is Action's case that shares purportedly belonging to its 5 clients were sold on March 25, 2020 and accordingly Action relied upon the details of shares purportedly belonging to its 5 clients. However, upon perusal of the said details relied upon by Action, the Noticee noted that the bifurcation of collateral shares provided by Action vide its emails on March 19, 2020 and March 21, 2020 was for several clients and not only 5 clients. Therefore, the bifurcations provided by Action to the Noticee at the relevant time in March 2020 were not correct and were deliberately misleading. Therefore, the SCN ought not have accepted the bifurcations provided by TM, while issuing the present SCN.

The Noticee submitted that during the Arbitration proceedings, the Noticee made inquiries about Ketul Enterprises and learnt that Ketul Enterprises is a shareholder in Action and also that Ketul Enterprises has issued Inter Corporate Deposits (ICDs) to Action; therefore it was very closely connected to Action.

7.6.2 Findings of the Committee in respect of Arbitration Award passed in favor of the Noticee

a. With regard to the arbitration proceedings referred to by the Noticee, the Committee observes that the said arbitration proceedings are not relevant for the purpose of this SCN since the findings arrived at in the LPI are based on the information and data submitted by the Noticee during the inspection. The Committee observes that the factual matrix in the context of which the arbitration proceedings have been referred to by the Noticee is on the footing that the bifurcation of the collateral posted by the Action in terms of client shares and proprietary shares vide its email dated March 19, 2020 was not accurate. In this regard, the Committee observes that while the Committee had the benefit of the detailed inspection carried out by NCL of the records of the Noticee, however, the same material was not apparently available with the arbitration panel. The Committee further observes that on March 25, 2020, when the shares were sold by the Noticee, there was no arbitration award as on that

date. The Noticee had the bifurcation provided by the Action vide its email dated March 19, 2020 consisting of proprietary and client shares. Therefore, the Committee observes that the Noticee itself has relied upon the email of Action dated March 19, 2020. The Committee is unable to appreciate this submission since the Noticee has itself relied on the said email of March 19, 2020 from Action for the purpose of releasing the proprietary shares. Hence, the submissions appear to be an after-thought.

b. The thrust of the contention of the Noticee is that based on the documents submitted during the arbitration proceedings, there is an inconsistency in the data pertaining to the bifurcation provided by Action vide its email dated March 19, 2020, vis a vis the data submitted during the arbitration proceedings. The Committee observes that this submission has been made by the Noticee by merely casting an aspersion without any basis since the Noticee itself had failed to identify which are client shares and proprietary shares**.** The data contained in the aforesaid March 19, 2020 email has been compared with the data uploaded to NCL and it is observed that this is corroborated by the data uploaded to NCL. Therefore, the Committee is of the view that the primary reason for referring to the arbitration proceedings is adequately addressed on account of the aforesaid conclusion. Further, the Committee observes that during the course of inspection, the Noticee had only submitted the email

dated March 19, 2020 with respect to the bifurcation of client and proprietary securities and had not submitted any bifurcation vide email dated March 21, 2020 of Action despite being called upon to furnish all the communication between the Noticee and Action with respect to sale of securities. In view of the same, the Committee is unable to appreciate the merit of the contention of the Noticee in this regard.

c. In so far as the clients' shares are concerned, the Committee observes that in the arbitration award, it is mentioned in para 11 that *"the argument of the Applicant (Action) that the Respondent (Noticee) sold the Applicant's client shares has not been backed up by any substantial supportive evidence; therefore we have found it difficult to give our opinion with regard to violation or otherwise of instructions/guidelines in SEBI circulars dated September 26, 2019, June 20, 2019 and August 29, 2019."* It is further observed by the Committee that in conclusion in para 12 it was mentioned that "*the validity or otherwise of sale of client shares of the Applicant trading member by the Respondent clearing member, from regulatory angle, requires a detailed investigation by NCL/NSE on priority basis"* In view of the same, , the reliance by the Noticee by stating that the Arbitral Tribunal in its award dated January 30, 2021, has rejected all the claims made by Action against the Noticee does not appear to be correct and hence does not have any bearing on the findings of

the LPI. In any event, both the arbitration proceedings and the action pursuant to the SCN are independent of each other and not inter-dependent in any manner whatsoever.

d. With respect to the claimant Ketul Enterprise Pvt. Ltd. and Action, the Committee noted that the claimant had filed an Investor Grievance Redressal Complaint (IGRC), wherein the claimant had sought relief from the Investor Grievance Redressal Panel (IGRP), filed with NSE, for return of securities. The Committee further noted that the IGRP has passed an order that the trading member shall transfer all the shares mentioned in the order failing which the claim of Rs. 101,23,964.15 would become effective from September 16, 2020. The Committee further noted that it was also mentioned in the arbitration award that "*Pursuant to the IGRP order, the NSE had debited the amount of the Applicant for shares of the Applicant's clients sold by the Respondent amounting to Rs. 101,23,964.15 as there was no pay-in after squaring the open portion in the F&O segment. The Respondent (the Noticee) objected that as the IGRP order was dated 24/07/2020 and the Applicant has accepted its liability to pay the same before IGRP and as the SOC was filed on 19/08/2020 there is no reason for allowing the Applicant for revising the claim"*. From the aforesaid it is observed that the Noticee had stated that the IGRP order has become final and Action had accepted its liability to pay the same before IGRP and, therefore, the Noticee

objected to the revision of the claim by the Applicant. Therefore, it is not open for the Noticee to raise the issue of the relationship between the claimant and Action in the present proceedings and in any case the same is also not relevant for the purpose of the SCN.

DECISION

8 On an overall appreciation of the facts in the present case, the Committee observes that the Noticee was aware that the collateral posted by Action consisted of a mix of client shares and proprietary shares. The Noticee, vide its email dated March 16, 2020, clearly stated that the Noticee did not want to sell off client shares. Vide its email dated March 18, 2020, the Noticee had requested Action to provide the bifurcation of shares pertaining to Action's proprietary account. In the same email, the Noticee has also stated that on receiving the list from Action, it shall initiate liquidation of the proprietary shares. Despite the same, the Noticee had knowingly released the proprietary shares of Action on March 20, 2020, thereby leaving itself with predominantly client shares. On March 25, 2020, the Noticee has sold off client shares lying with it to recover the outstanding dues arising out of proprietary trades of Action.The Committee observes that the Noticee has failed to perform adequate due diligence while handling client securities and that clients' securities were utilised for meeting the obligations arising out of proprietary trades of the Trading Member resulting in misuse of client shares. 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 and the Regulations of NCL, as stated in the SCN.

9 Therefore, in 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 wrongfully disposed of is as per Annexure A.

10 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 in Annexure B have been derived on the basis of the information submitted by the Noticee of the securities sold under Annexure A and corelating the same with the information uploaded by the Noticee to NCL for March 23, 2020 with respect to client securities amounting to Rs. 1.95 Crs as on the date of disposal of securities viz March 25, 2020. The said securities in Annexure B are to be reinstated within a period of fifteen (15) calendar days from the date of receipt of the order to be dealt with in accordance with the directions of NSE failing which, an amount equivalent to the value of the securities as on the 16th day (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 out of its own unencumbered holdings.

11 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.

12 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. The Committee is, therefore, of the view that a penalty may be levied. It is noted that presently there is no penalty matrix available in this regard and a uniform penalty structure across all the Clearing Corporations is being formulated. 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 is dependent 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 Hence, imposition of penalty at an ad-valorem rate that works out to Rs 1.95 lakhs (Rupees One lakh ninety five thousand) (1% of Rs 1.95 crores) could be considered in addition to restitution of securities as ordered above. Hence, a penalty of Rs. 1.95 Lakhs (Rs. One lakh ninety-five thousand 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.

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: May 03, 2021