Annexure 1

Before the
Member and Core Settlement Guarantee Fund Committee
("MCSGFC"/"Committee")
of
National Stock Exchange of India Limited
Exchange Plaza, Bandra-Kurla Complex, Bandra East, Mumbai – 400051
held on June 2, 2022
In the matter of the Trading Member M/s. Emkay Global Financial Services Ltd.

CORAM:

Ms Mona Bhide	- Chairperson
Mr K Narasimha Murthy	- Committee Member
Ms Anuradha Rao	- Committee Member
Mr Ranganayakulu Jagarlamudi	- Committee Member
Mr Vikram Limaye	- Committee Member

ALSO PRESENT:

Ms Priya Subbaraman	- Chief Regulatory Officer
Dr Dinesh Kumar Soni	- Senior Vice President – Regulatory
Mr Suresh Nair	- Vice President – Enforcement

BACKGROUND

1. **M/s Emkay Global Financial Services Ltd** ("**Emkay**") is a Trading Member registered with the National Stock Exchange of India Limited ("**Exchange**") and enabled in Capital Market ("**CM**") segment since November 1995, Futures & Options ("**F&O**") segment since June 2001, Currency Derivative ("**CD**") segment since August 2008 and Commodity ("**COM**") segment since January 2019.

2. Securities and Exchange Board of India **("SEBI"),** alongwith Stock Exchanges, conducted a joint inspection of Emkay's books of accounts and records from November 2021 to February 2022, covering the period from April 1, 2020, to October 31, 2021. Post inspection, SEBI issued a letter of findings dated February 2022 ("**LoF**") to Emkay for the observed non-compliances with the regulatory provisions.

3. Subsequently, in its 26th Joint Committee meeting held on March 29, 2022, SEBI allocated the case to the Exchange for post-inspection enforcement action, in accordance with the provisions of the Rules, Byelaws, and Regulations of the Exchange. The Exchange, vide email dated February 14, 2022, informed Emkay regarding the case allocation to the Exchange.

4. Emkay, vide email dated March 7, 2022, replied to the LoF.

INSPECTION OBSERVATIONS/ALLEGED VIOLATIONS

5. The observations/alleged violations mentioned in the LoF are summarized hereunder:

5.1 Misuse of clients' funds i.e., funds of credit balance clients used to meet the settlement obligations of debit balance clients or for own purpose as of March 3, 2021, and March 4, 2021, involving Rs.26.83 crores and Rs.34.64 crores, respectively, thereby violating Principle 1 of Enhanced Supervision of Stockbrokers.

5.2 Non-maintenance of daily reconciliation statement for transfer of funds between own and beneficiary accounts in 100 instances wherein a net amount of Rs.99.35 crores was transferred from own bank to client bank account.

5.3 Use of client bank account for purpose other than specified to the extent of Rs.100.20 crores in 36 instances.

5.4 Incorrect data uploaded in the weekly holding statement in 2 instances involving Rs.3.22 crores as of September 16, 2020, and in 1 instance involving Rs.1.05 crores as of October 1, 2020

5.5 Non-settlement of clients' funds and securities as under:

- *Active Clients* – 6 instances of 6 clients of 600 instances of 600 clients involving Rs.1.41 crores

- *Inactive Clients* – 1937 instances of 1674 clients involving Rs.6 crores across six quarters. For last month i.e. September 2021, 39 out of 4936 inactive clients were not settled, involving Rs. 2.60 crores.

5.6 Delay in updating KYC details on the KRA portal in 7 instances with a delay ranging from 344 to 3050 days.

5.7 Non-resolution of investor complaint within the prescribed time in 1 instance

5.8 Incorrect data submitted towards weekly monitoring of clients' funds under Enhanced supervision in 6 areas with differences ranging from Rs.0.01 crore to Rs.5.91 crores.

RELEVANT REGULATORY PROVISIONS

6. At the outset, it is appropriate to refer to the relevant regulatory provisions alleged to have been violated by Emkay; extracts whereof are reproduced below:

6.1 Emkay has misused funds of credit balance clients used to meet the settlement obligations of debit balance clients or for own purpose as of March 3, 2021, and March 4, 2021, involving Rs.26.83 crores and Rs.34.64 crores, respectively. Thus, Emkay has misused client funds and violated the provision of the following Regulations and Circulars of the Exchange-

i. Regulation 4.5.3 (e) of NSEIL Regulations (CM and F&O Segments)

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

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

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

Principle

The total available funds, i.e. cash and cash equivalents, with the stockbroker and with the clearing corporation/clearing member (A + B), should always be equal to or greater than Clients' funds as per ledger balance (C)

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

If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for

settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges.

6.2 Emkay failed to maintain daily reconciliation statements clearly indicating the funds transferred between proprietary and clients' bank accounts. Thus, Emkay violated the provision of the following Circular of the Exchange:

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

2.4.2. Transfer of funds between "Name of Stock Broker - Client Account" and "Name of Stock Broker - Settlement Account" and client's own bank accounts is permitted. Transfer of funds from "Name of Stock Broker - Client Account" to "Name of Stock Broker - Proprietary Account" is permitted only for legitimate purposes, such as, recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such transfer of funds, stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred.

6.3 Emkay used the client bank account for purpose other than specified. Thus, Emkay violated the provision of the following Regulation of the Exchange:

i. Regulation 6.1.6.2 of the Regulations (F&O segment), and Regulation 6.1.5 (c) of Part A of the Capital Market Regulations of the Exchange

The transfer from client's account to Trading Member's account shall be allowed under circumstances enumerated below:

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

ii. ***Moneys to be paid into "clients account":*** *No money shall be paid into clients account other than –*

A. *money held or received on account of clients;*
B. *such moneys belonging to the Trading Member as may be necessary for the purpose of opening or maintaining the account;*
C. *money for replacement of any sum which may by mistake or accident have been drawn from the account;*
D. *a cheque or draft received by the Trading Member representing in part money belonging to the client and in part money due to the Trading Member.*

iii. ***Moneys to be withdrawn from "clients account":*** *No money shall be drawn from clients account other than –*
   A. *money properly required for payment to or on behalf of clients for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Trading Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;*
   B. *such money belonging to the Trading Member as may have been paid into the client account under para (ii.B) and (ii.D) above. money which may by mistake or accident have been paid into such account.*

iv. ***Right to lien, set-off etc., not affected:*** *Nothing in this para 1 shall deprive a Trading Member of any recourse or right, whether by way of lien, set-off, counter-claim charge(s) or otherwise against moneys standing to the credit of clients' account.*

6.4 Emkay had uploaded incorrect data in the weekly holding statement. Thus, Emkay violated the provision of the following Circular of the Exchange.

i. Exchange Circular No. NSE/INSP/39855 dated January 3, 2019

All Members were advised to comply with the requirement and upload the holding statement data electronically for all calendar days of the reporting week on or before the next four trading days of subsequent week through the Inspection module in the Member portal. The procedure for submission of the data was given in Annexure-1 of this circular.

6.5 Emkay failed to settle clients' funds and securities on a monthly/quarterly basis as per the clients' preference. Thus, Emkay violated the provision of the following Circular of the Exchange:

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

Unless otherwise specifically agreed to by a client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stockbroker to maintain a running account subject to inter alia the following condition:

The actual settlement of funds and securities shall be done by the broker at least once in a calendar quarter or month, depending on the preference of the client.

6.6 Emkay had uploaded the KYC details on the KRA portal with a delay. Thus, Emkay violated the provision of the following Circular of the Exchange:

i. Exchange Circular No. NSE/INSP/19654 dated December 26, 2011

After doing the initial KYC of the new clients, the intermediary shall forthwith upload the KYC information on the system of the KRA and send the KYC documents, i.e. KYC application form and supporting documents *of the clients, to the KRA within 10 working days from the date of execution of documents by the client and maintain the proof of dispatch.*

6.7 Emkay did not resolve the investor complaint within the prescribed time. Thus, Emkay violated the provision of the following Regulation of the Exchange:

i. Regulation 9(e) of SEBI (Stock Brokers) Regulations, 1992

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

6.8 Emkay has incorrectly reported data towards weekly monitoring of clients' funds under the Enhanced Supervision of Stockbrokers. Thus, Emkay violated the provision of the following Circular of the Exchange:

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

3.2. Stockbrokers shall submit the following data as on the last trading day of every week to the Stock Exchanges on or before the next trading day:

A-Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges.

B-Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.

F-Aggregate value of Non-funded part of the BG across Stock Exchanges

P-Aggregate value of Proprietary Margin Obligation across Stock Exchanges

MC-Aggregate value of Margin utilized for positions of Credit Balance Clients across Stock Exchanges

MF-Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges

CONSIDERATION & FINDINGS

7. The observations/alleged violations, the reply of Emkay and the findings of the Committee, are as under:

7.1 **Misuse of clients' funds**

a. Upon verification of the data submitted by Emkay under the Enhanced Supervision of Stockbrokers as of March 3, 2021, and March 4, 2021, vis-à-vis the bank statements, trial balance and records of the Exchange/Clearing Corporation/Clearing Member, it was observed that Emkay had used the funds of credit balance clients to meet the settlement obligations of debit balance clients or own purpose to the extent of Rs.26.83 crores to Rs.34.64 crores as of

March 3, 2021, and March 4, 2021, respectively, thereby violating Principle 1 of the Enhanced Supervision of Stockbrokers. The details are as per the Table below-

Date	March 3, 2021	March 4, 2021
Total fund balance available in all client bank accounts, including the settlement account, maintained by the stockbroker across stock exchanges (A)	34,04,24,381	28,14,62,927
Collateral deposited with clearing corporation/ clearing member in the form of Cash and Cash Equivalents (Fixed deposit (FD), Bank Guarantee (BG), etc.) across all Stock Exchanges (B)	266,81,00,120	297,31,11,670
Total credit balances of all clients as obtained from trial balance across stock exchanges (C)	335,49,42,075	352,28,75,765
Shortfall of funds (G= A+B-C)	**34,64,17,574**	**26,83,01,167**

b. In reply to the LoF, Emkay submitted as under:

i. There was no misuse of clients' funds as per the Enhanced Supervision of Stock Brokers as of March 3, 2021, and March 4, 2021, as sufficient balance (cash and fixed deposit) was available.

ii. The Exchange did not consider the fixed deposits that were created on the instruction of clients from the ledger balances maintained with Emkay and renewed on respective dates on March 3, 2021, and March 4, 2021. The effect was given on the next day even though the fixed deposits existed on the value dates.

iii. The observed instances do not pertain to the creation of new fixed deposits but are instances of subsequent renewal of existing fixed deposits of the clients. The fixed deposits or clients' funds were already in existence with Emkay on the said dates. The details are as under-

Sr. Nos	Date of renewal	Total value of non - considered renewed fixed deposits (Rs.)	Value of "G" after considering renewed fixed deposits (Rs.)
1	March 3, 2021	40,50,00,000	5,85,82,426
2	March 4, 2021	34,70,00,000	7,86,98,833

iv. Emkay provided the following documents in support of its claim:

a. Email confirmation from banks confirming renewal of fixed deposits and intimation of the same to the Exchange for the said dates.
b. CL01 file (details of collaterals submitted by Clearing Member) of subsequent dates relevant to value dates (i.e., March 4, 2021, and March 5, 2021) indicating the renewal of fixed deposits on March 3, 2021, and March 4, 2021. In the CL01 file of the Exchange dated March 5, 2021, the effect of fixed deposits renewed on March 3, 2021, and March 4, 2021, were duly given for the same reporting dates, i.e., March 3, 2021, and March 4, 2021.
c. Revised calculation as per the Enhanced Supervision table after taking into consideration the effect of the non-considered client fixed deposits. it is evident that all the indicators as prescribed by the relevant reporting requirements are exceptionally positive.

v. In view of the above, it is evident that the value of "G" was not negative on any of the dates, and there are no instances of clients' funds being used for settlement obligations of debit balance clients or own purposes.

vi. The observed shortfall was owing to slight delays on Exchange/bank's part due to which benefit of the fixed deposits renewed by Emkay was given on the next day even though the fixed deposits were already in existence.

c. The Committee finds as under:

i. The contention of Emkay that the shortfall was observed due to the non-consideration of fixed deposits of Rs.40.50 crores and Rs.34.70 crores which were were given for renewal as of March 3, 2021, and March 4, 2021, respectively is observed to be correct after considering the evidence in the form of email confirmations from banks that the said FDs created out of client funds were available and were under renewal on the dates considered for inspection.

ii. Therefore, the Committee decided that the benefit of the fixed deposits needs to be given to Emkay. After considering the fixed deposits, there is no misuse/shortfall of client funds as of March 3, 2021, and March 4, 2021.

d. In view of the findings mentioned above, the Committee decided that no action is warranted in the matter.

7.2 Non-maintenance of daily reconciliation statement for transfer of funds between own and client bank account

a. Upon verification of bank books, the Exchange observed that Emkay had transferred Rs.44.92 crores (in 32 instances) from the client bank account to own bank account and Rs.144.27 crores from own bank account to client bank account (in 9 instances). Therefore, Emkay transferred a net amount of Rs.99.35 crores from own to the client bank account. However, Emkay did not maintain a daily reconciliation for these fund transfers.

b. In reply to the LoF, Emkay submitted as under:

i. Emkay has duly maintained the reconciliation statement in line with the regulatory requirements. For every entry, a detailed narration is provided about the bank account to which the funds were transferred. The following types of transfers were undertaken:

a. *Transfer from client bank account to the Exchange dues account*- Funds were transferred to the Exchange dues account from client bank account towards charges payable to the Exchange on behalf of clients, viz. transaction charges (major part), SEBI fees and other applicable charges.

b. *Transfer from the Exchange dues account to client bank account*: These are the entries towards the excess amount transferred back from the Exchange dues account to client bank account.

c. *Transfer from/to own account to/from client bank account:* Funds were transferred from own bank account to client bank account to meet temporary pay-in obligations of the clients. Subsequently the amount was transferred back to own bank account. Further, Emkay predominantly transferred excess funds from own account to client bank account, wherein it is evident that the clients' funds were not utilized for own purpose. Emkay provided an instance-wise reconciliation statement to the Exchange in support of its claim.

ii. In view of the above, a proper reconciliation statement is maintained, indicating the details of funds transferred in case of any transfer of funds

between client account(s) and proprietary account(s) for legitimate purposes.

c. The Committee finds as under:

i. Emkay has claimed that it had transferred funds from own bank account to client bank account to meet temporary pay-in obligations of the clients, and subsequently the amount was transferred back to own bank account. Emkay transferred the excess funds from own account to client bank account, wherein it is evident that client funds were not utilized for own purpose.

ii. However, Emkay's contentions are unacceptable as it did not provide the reconciliation in the form which demonstrates the effect of the fund transfers from client bank account to own bank account on the availability of client funds i.e., "G".

iii. Exchange Circular No. NSE/INSP/33276 dated September 27, 2016, states that transfer of funds from the client account to proprietary account is permitted only for legitimate purposes, such as the recovery of brokerage, statutory dues, funds shortfall of debit balance clients, which the stockbroker has met, etc. The said circular mandates the Trading Members to maintain a daily reconciliation statement clearly indicating the amount of funds transferred.

iv. Thus, by not maintaining a daily reconciliation statement clearly indicating the amount of funds transferred, Emkay has violated the provisions of Exchange Circular No.NSE/INSP/33276 dated September 27, 2016.

d. In view of the findings mentioned above, the Committee decided to levy a monetary penalty of Rs.25,000/- on Emkay in terms of Exchange Circular No. NSE/INSP/47457 dated February 25, 2021.

7.3 <u>Use of client bank account for purposes other than specified</u>

a. Upon verification of the bank books submitted by Emkay, it was observed that Emkay had used client bank account for purposes other than specified in 36 instances amounting to Rs.100.20 crores as under:
   i. 12 instances involving Rs.2,29,916/- are receipts from Remiser/Authorised Persons,

ii. 1 instance involving Rs.2,00,000/- pertains to payment made to Remiser/Authorised Persons,
iii. 15 instances involving Rs.5,100/- are receipts towards research fees,
iv. 5 instances involving Rs.2,802/- are demat charges received from freezed client codes and
v. 3 instances involving Rs.100.17 crores are funds received from Dhanuka Agritech Limited in relation to a buy-back transaction carried out as Merchant Banker/Manager on behalf of Dhanuka Agritech Limited.

b. In reply to the LoF, Emkay submitted as under:

i. The client bank account is not used for other than approved purposes. Few of the observed instances pertain to receipt of fees in respect of research services. Emkay being a SEBI registered and regulated research analyst, funds are received from non-UCC clients (clients only for research services) towards research fees to whom research services were provided.

ii. Few other instances pertain to cases wherein funds were received from/paid back to its Exchange registered Authorized Persons.

iii. Few of the other observed instances pertain to cases where clients have registered Depositor Participant Beneficial Owner (DPBO) accounts with CDSL, and the clients make payments towards demat charges. These trading codes are already marked as freezed in the back-office system.

iv. 3 of the observed instances pertain to Emkay's merchant banking activities. Emkay being a SEBI registered and regulated merchant banker was appointed as merchant banker/manager by M/s.Dhanuka Agritech Limited for a buy-back tender offer of Rs.10,00,000/- equity shares of the company at a price of Rs.1,000/- per equity share (aggregate amount of Rs.100 crores). These funds were received from M/s.Dhanuka Agritech Limited for pay-in to the Exchange in relation to buy-back transaction carried out through BSE as merchant banker/manager on behalf of M/s.Dhanuka Agritech Limited.

v. Emkay has submitted Exchange trade files and contract notes relevant to the said transaction supporting its claim.

c. The Committee finds as under:

i. Out of 36 instances involving Rs.100.20 crores, 29 instances involving Rs.100.18 crores pertain to income generated from activities other than the broking activities viz; merchant banking, research services etc. Regulation 6.1.5 of Regulations – Part A (Capital Market Segment) and Regulation 6.1.6.2 of Regulations (F&O) segment requires the Trading Members to maintain proper segregation between client and own funds. Therefore Emkay, using the client bank account for receiving the income generated from activities other than the broking activities, has violated the provisions of Regulation 6.1.5 of Regulations – Part A (Capital Market Segment) and Regulation 6.1.6.2 of Regulations (F&O) segment.

ii. All the observed 29 instances were bank receipts, indicating that client funds were not misused. Given the above, while deciding that a monetary penalty may not be levied, the Committee deems it appropriate to issue directions in this regard.

iii. In the remaining 5 instances involving Rs.2,802/-, the funds are received from the client towards the demat account charges. The said submission is acceptable. 1 instance involving Rs.2,00,000/-, there is reversal entry of receipt and payment of Rs.2 lakhs from the account of Remisier/AP where the cheque has been returned. The benefit of the said transactions may be given to Emkay.

d. In view of the findings mentioned above, the Committee directed Emkay to desist from using client bank account for purposes other than specified and warned to ensure non-recurrence of the observed violation.

7.4 <u>Incorrect reporting of data in the weekly holding statement</u>

a. Upon verification of the reconciliation of ISIN wise client wise securities available with Emkay as of September 16, 2020, and October 1, 2020, it was observed that Emkay submitted incorrect data to the Exchange in 2 instances involving Rs.3.22 crores as of September 16, 2020, and in 1 instance involving Rs.1.05 crores as of October 1, 2020.

b. In reply to the LoF, Emkay submitted as under:

i. Emkay did not derive any undue benefit from inadvertent and erroneous reporting of the holding balances.

ii. The system generated erroneous client holding reports were due to a technical glitch in the back-office system from where the reports were extracted. This is evident from the fact that the observed 3 clients are neither registered for transacting in the F&O segment (for considering the holding as collateral for margin purposes) nor were these shares pledged by the clients in favor of Emkay for margin purposes. The said shares were not available with Emkay for a long time and were transferred for impending client pay-in obligations.

iii. In 2 instances, holding balances were reported short as compared to actual holding balances available. As soon as the system glitch came to Emkay's notice, Emkay has communicated the said issues to its software vendor.

iv. Emkay submitted a copy of its communication with its software vendor to the Exchange to support its claim.

v. Emkay provided an instance-wise reply as under:

1. *Trading UCC A817; Client Name: Adeesh Patni Trust; ISIN No.: INE 398R01022; ISIN Name: Syngene International Ltd; Quantity: 50,000, Demat Account No.: 12023000-00973915*

- This instance pertains to short reporting of clients' holdings wherein the securities were transferred for pay-in of the Exchange settlement no. 2020177 in CDSL pool account no. 12023000-00000461 and transferred to the Exchange early pay-in ("EPI") account for EPI benefit on September 14, 2020.

- Emkay reported 1,00,000 securities on September 14, 2020, received from the client i.e. 50,000 securities towards obligation and 50,000 securities received in advance. However, while reporting as of September 15, 2020, the system only considered 50,000 securities received against settlement obligation, and the remaining 50,000 securities received in advance were erroneously missed by the system while reporting.

- The said securities were sold by the client in the NSE settlement no. 2020178 were adjusted and reported correctly on September 16, 2020, with 50,000 securities. Consequently, though the securities were lying with the Exchange EPI account, the system erroneously

generated data for 50,000 short quantities as of September 15, 2020. As the EPI account is maintained with the Exchange, system generated reconciliation statement is not available with Emkay. Hence, Emkay was required to reconcile the data manually.

2. *Trading UCC S813; Client Name: Sonakshi Patni Trust; ISIN No.: INE 398R01022; ISIN Name: Syngene International Ltd; Quantity: 8108; Demat Account No.: 12023000-00973837*

   - This instance pertains to short reporting of client holdings wherein the securities were transferred for pay-in of the NSE settlement no. 2020177 in the CDSL pool account no. 12023000-00000461 and transferred to the Exchange EPI account on September 14, 2020. Emkay correctly reported 16,216 securities on September 14, 2020, received from the client i.e., 8,108 securities towards obligation and 8,108 securities received in advance.

   - However, while reporting for September 15, 2020, the system only considered 91,892 securities received against the settlement obligation of the NSE settlement no. 2020177 and 2020178 and remaining 8,108 securities received in advance were erroneously missed by the system on the said date.

   - Emkay correctly reported 91,892 securities on September 16, 2020, sold by the client in NSE settlement no. 2020178. Out of 91,892 securities, 8,108 securities were received in advance, and 83,784 securities were received from the client account.

   - Consequently, though the securities were available in the Exchange EPI account, the system erroneously generated data with 8,108 short quantities as of September 15, 2020. As the EPI account is maintained with the Exchange, system generated reconciliation statement is not available with Emkay. Hence, Emkay was required to manually reconcile the data.

3. *Trading UCC J712; Client Name: Nirmal Abhaykumar Jain; ISIN No.: INE021A01026; ISIN Name: Asian Paints; Quantity: 5,130, Demat Account No.: IN30429529256893*

- The securities were transferred by the client in NSE settlement no. 2020189 in NSDL pool account no. IN300126-11180856. However, the client sold the relevant quantity in NSE settlement no. 2020190. These securities were transferred on an earlier day/settlement by the client to make the quantity available for selling with no separate margin deposit with Emkay.

- Emkay had correctly reported 5,130 securities on September 30, 2020, received from the client's demat account. In line with inter-settlement executed from one settlement to another settlement for pay-in, the actual quantity of 5,130 moved from previous NSE settlement no. 2020189 to the next settlement no. 2020190. The system generated and displayed the holding of advance received and transferred a quantity of NSE settlement on October 1, 2020.

- For the NSDL pool account, Emkay relies on HDFC bank as its NSDL DP (which does not offer demat holding for the previous day and NSDL Speed-e only gives holding as on day). Emkay reviews each transaction on ISIN basis and matches with the closing balances of all settlements with the previous opening balance of one day. Owing to difficulty and cumbersome process in this scenario, there were inadvertent errors from the system while reporting data. Emkay provided documentary evidence i.e. statement of register of securities, ledger, and multiple settlement positions of clients for the period to the Exchange in support of its claim.

- The incorrect reporting was owing to an inadvertent technical issue. The client holdings were erroneously reported incorrectly in 3 instances of negligible value vis-à-vis the total sample size inspected by the inspection officials. As soon as the error came to Emkay's notice, the same was immediately communicated to its back-office software vendor. Emkay also incorporated the requisite changes, including the deployment of necessary controls/checks in its reporting system.

c. The Committee finds as under:

i. Emkay has attributed the violation to a technical glitch in the back-office system from where Emkay has extracted the reports. Erroneous client holding reports which were generated by the system and were inadvertently

reported to the Exchange without even examining the correctness of the data submitted.

ii. Exchange Circular No. NSE/INSP/39393 dated November 13, 2018, requires the Trading Members to upload day-wise Holding Statement in the specified standard format every week. The Exchange monitors the data submitted by the Trading Members as a part of its regulatory supervision, and any incorrect submission, therefore, defeats the purpose of regulation. As such, any incorrect reporting for reasons whatsoever is neither permissible nor acceptable. Hence, the Trading Members must verify the data before submission to the Exchange.

iii. Therefore, by reporting incorrect data in the weekly holding statement, Emkay violated the provisions of Exchange circular no. NSE/INSP/39393, dated November 13, 2018.

iv. As per Exchange Circular No. NSE/INSP/45899 dated September 30, 2020, the disciplinary action for incorrect weekly holding statement is applicable for submissions from the week ending October 3, 2020. Hence, the said circular is not applicable for the instances pertaining to September 16, 2020.

d. The Committee hence decided to levy a monetary penalty of Rs.25,000/- be levied for the instances of incorrect reporting dated October 1, 2020.

7.5 Non-settlement of clients' funds and securities

a. Upon verification of the register of securities, clients' ledgers, trial balance, and Exchange records, it was observed that Emkay had not settled the clients' funds and securities as under:

i. *Active Clients* – In 6 instances of 6 clients out of 600 instances of 600 clients involving Rs.1.41 crores constituting 1% of the total samples verified.

ii. *Inactive Clients* – In 1,937 instances of 1,674 clients involving Rs.6 crores across six quarters. For the last quarter ended Sep 2021, the non-settlement was observed in 39 out of 4936 clients, constituting 1% of the total samples verified.

b. In reply to the LoF, Emkay submitted as under:

i. *Active Clients* – The clients were settled on additional dates during the relevant quarter. Emkay submitted retention statements sent to clients along with detailed workings supporting its claim.

ii. *Inactive Clients* – Emkay ensured settlement of clients' funds and securities in all instances except in the case of a few genuine instances divided in 5 categories of unique clients as under:

1. *Active and settled clients (15 instances of 10 clients involving Rs.4.52 crores)*

a) These are premium clients who have actively traded during the respective quarter. Client codes B055 and M060 were also included under the heading "trading member has not settled active clients".

b) Emkay duly settled the clients' funds/securities ensuring compliance with the regulatory provisions. Emkay provided retention statements sent to clients at the time of settlement and trade details of clients to the Exchange supporting its claim.

2. *Non-traceable clients (65 instances of 25 clients involving Rs.0.92 crore)*

- The clients are inactive (mostly NRIs), who are yet to provide their updated banking details despite Emkay's continuous approach through branch/franchisee network. Most of the clients may have started trading with other brokers, hence, have become passive or migrated/changed address without informing Emkay of their latest address.

- In these cases, Emkay issued and sent physical cheques; however, the entries had to be reversed due to various reasons i.e. cheques sent by courier returned back with remark "client do not stay at this address" or cheques delivered to clients but remained uncashed for more than 3 months. Emkay still attempts to contact relevant clients as they have turned inactive (dormant).

- Exchange Circular No. NSE/INSP/43488 dated February 10, 2020, stipulates that in cases where Members are unable to trace inactive clients in spite of all efforts taken, Members are directed to open one separate client bank/client collateral demat account and immediately set aside the funds and securities of these clients in such account. Accordingly, Emkay transferred the funds of such inactive accounts to a separate bank account opened and identified as inactive client bank account.

3. *Clients with legal disputes or debarred by the regulators (77 instances pertaining to 15 clients involving Rs.0.24 crore)*

   - These clients are not settled owing to various reasons, viz. the clients are debarred by any of the regulators, legal disputes in relation thereto are sub judice with the judiciary, etc. Emkay provided an instance-wise reply along with supporting documents to the Exchange.

4. *Settled clients (1,660 instances pertaining to 1,571 clients involving Rs.0.28 crore)*

   - Emkay has duly settled all the clients under this observation in accordance with regulatory provisions.

   - Emkay provided an instance-wise reply along with supporting documents/retention statements sent to clients at the time of actual settlement in support of its claim.

5. *Other settled clients (120 instances of 57 clients involving Rs.2.02 crores)*

   - These accounts have meager balances i.e. below Rs.10,000/- and a total value of approximately Rs.2 lakhs. In most of these cases, Emkay had already settled the clients before the start of the inspection.

   - In other instances where relevant clients have also maintained demat accounts with Emkay, minor amounts were retained towards demat charges. There is no violation of any of the provisions of the regulatory guidelines.

c. The Committee finds as under:

i. *Active Clients (6 instances of 6 clients out of 600 instances of 600 clients involving Rs.1.41 crores constituting 1% of the total samples verified)* –

a. Emkay claimed that the clients were additionally settled on additional dates during the relevant quarter. The Exchange vide email dated May 24, 2022, requested Emkay to provide relevant supporting documents i.e. client ledgers, bank statements highlighting payments etc. Emkay, vide email dated June 6, 2022, submitted the said details and on verification, , it was observed that 1 instance involving Rs.58,400/- pertains to June 2020 quarter for which benefit may be extended to Emkay due to Covid-19 situation prevalent in the country.

b. For balance 5 instances involving Rs.1.40 crores, Emkay has provided different dates for the said quarter in which Emkay settled the clients. Upon verification, it was observed that Emkay has settled the client on different dates in the same quarter, which is in line with the regulatory requirements pertaining to settlement of client accounts

c. Therefore, after considering Emkay's reply, no irregularity is observed with respect to the non-settlement of active clients.

ii. *Inactive Clients (Observed in 1937 instances of 1674 clients across six quarters involving Rs.6 crores)* –

a. For 1660 instances (1571 clients) involving Rs.28.95 lakhs, Emkay has claimed to have duly settled the clients.

b. For 77 instances (15 clients) involving Rs.24.24 lakhs, the settlement could not be done owing to legal disputes/debarred entities.

c. For 65 instances (25 clients) involving Rs.92.41 lakhs, the settlement could not be done, as the clients were non-traceable.

d. For 15 instances (10 clients) involving Rs.452.83 lakhs, the observed clients were active clients that were duly settled.

e. Remaining 120 instances (57 clients) involving Rs.2.02 lakhs could not be settled for various reasons viz; amount retained towards DP charges, Amount paid through NEFT, Cheque issued, PMS clients etc.

f. Emkay claimed that list of clients termed as inactive clients in the list of observations, majority of these all clients are not inactive. Also, it is evident from the fact that out of total 1937 instances total 1674 instances are non-repetitive client codes, indicative of the fact that the

client list is different for each quarter covered during the inspection period & there is seldom any client who is non-settled for all the quarters of inspection period, except for genuine reasons.

g. Exchange vide email dated May 24, 2022, advised Emkay to submit client ledger, client holdings and DP statements, bank statements.
h. Emkay vide dated June 06, 2022, has submitted these details
i. Upon verification, it is observed that Emkay has settled the clients in the respective quarter, which is in line with the regulatory requirements pertaining to settlement of client accounts
j. Therefore, no irregularity continues with respect to the non-settlement of inactive clients after considering Emkay's reply.

d. In view of the findings as mentioned above, the Committee decided while no violations are observed, Emkay is advised to comply with the regulatory requirements with respect to inactive client accounts as issued by Exchange/SEBI from time to time.

7.6 Client Registration Process

a. Upon verification of the KRA data for 50 sample clients and their KYCs, copies of the client information uploaded in the KRA portal, it was observed that there was a delay in updating of KYC details on the KRA portal in 7 instances. Delay ranges from 344 days to 3050 days.

b. In reply to the LoF, Emkay submitted as under:

i. There is an error on the part of the inspection officials with respect to non-compliance observed pertaining to updation of KYC records to the KRA portal. In all the observed instances, the client agreement date or account opening date of the relevant clients were incorrectly mentioned.

ii. The account opening dates were correctly mentioned in the annexure of the client list provided as part of the pre-inspection questionnaire and also in the Exchange UCC database files provided to the inspection officials.

iii. Emkay provided instance-wise reply as under:

a) *3 instances (Client Codes B83G004, B53J300 and B56H1578):* The agreement date is mentioned incorrectly. KRA was registered within 7 days of the actual date of account opening.

b) *2 instances (Client Codes B102A052 and B102A053):* The agreement date is mentioned incorrectly. The delay occurred due to the Covid-19 pandemic situation. The accounts were opened during the peak period of the first wave of the pandemic. SEBI, given the COVID situation, had given relaxation for uploading the KRA details.

c) *2 instances (Client Codes B102A094 and B13G1033):* The agreement date is mentioned incorrectly. Respective clients' KRA was already registered at the time of account opening.

c. The Committee finds as under:

i. For 2 instances of Client Codes B102A052 and B102A053, Emkay has claimed that SEBI had granted relaxation for the requirement pertaining to upload of KYC details to KRA given the COVID 19 situation. Upon verification, it was observed that the account opening dates were May 13, 2020, and May 14, 2020, and the completion date of KRA was November 18, 2020, for both clients. Considering the Covid-19 pandemic situation, benefit can be extended to the client for the said 2 instances.

ii. For the remaining 5 instances, Emkay's claim that the details were timely uploaded to KRA was found to be in order.

iii. Therefore, no irregularity continues with respect to the said observation after considering Emkay's submission.

d. In view of the findings as mentioned above, the Committee decided that no action is warranted in the matter.

7.7 <u>Delay in resolution of client complaint</u>

a. Emkay did not resolve 1 client complaint within one month from the date of receipt of the complaint. Emkay resolved the complaint in 43 days.

b. In reply to the LoF, Emkay submitted as under:

i. Emkay has a robust grievance redressal mechanism in place at the organization level. The same is evident from the fact that most of the grievances received are in the nature of service requests, and very few

grievances reached the Exchange Investor Grievance Resolution Panel ("IGRP")/Arbitration stage during the inspection period. Further, none of the grievances is pending for more than 30 days.

ii. Emkay has duly attended to the client's grievance, and there was no delay in replying to the client at any stage of the grievance. Redressal of the grievance took more time for closure owing to the chain of communication/discussion with the client of which the client was aware.

iii. Emkay promptly replied to the client's initial email dated October 6, 2021, on October 7, 2021, and October 18, 2021, in due course. However, as the client was not in agreement with the amicable settlement offered by Emkay, the client requested for personal meeting vide email dated October 21, 2021, which was also promptly replied to vide email dated October 22, 2021. During a personal meeting dated November 1, 2021, and a series of subsequent conversations with the client, the client agreed to settle the grievance with a final settlement amount of Rs.60,000/- and the same was also informed by the client vide email dated November 17, 2021. On November 18, 2021, Emkay immediately acted on the issue and addressed the client's grievance to his satisfaction.

iv. There was no delay in timely response to any of the communications/emails of the client. Emkay provided the chain of email communications with the client in support of its claim to prove that though there was a period of more than 30 days for the final resolution of the grievance, the delay was consensual.

c. The Committee finds as under:

i. Emkay attributed the delay to the discussions with the client and that the client being aware of the same.

ii. Emkay provided supporting documents of communication made with the client. Upon verification of the same, Emkay's claim is found to be in order. Therefore, no irregularity continues with respect to observation after considering Emkay's submission.

d. In view of the findings as mentioned above, the Committee decided that no action is warranted in the aforesaid matter.

7.8 Incorrect data submitted towards the weekly monitoring of client funds under Enhanced Supervision

a. Upon verification of the data submitted towards weekly monitoring of clients' funds under the Enhanced Supervision of Stockbrokers as of October 22, 2021, it was observed that Emkay submitted incorrect data to the Exchange in 6 areas viz., " Total of day end balance in all client bank accounts", "Collateral deposited with exchanges in form of cash and cash equivalents", "Value of non-funded portion of the bank guarantee", "Proprietary margin obligation", "Margin utilized for positions of credit balance clients", and "Free/unblocked collateral deposited with Clearing Corporation". The differences range from (-ve) Rs.0.19 crores to Rs.5.91 crores:

b. In reply to the LoF, Emkay submitted as under:

i. Emkay did not violate any of the principles of Enhanced Supervision guidelines. Emkay provided supporting documents to the inspection officials in the reconciliation of figures originally reported on the Exchange Portal by Emkay for the respective date.

ii. The inspection officials did not provide any workings or calculations for arriving at the differences reported during the inspection.

iii. Emkay submitted Exchange confirmation email regarding figures reported to the Exchange portal and a detailed calculation inclusive of all the supporting documents previously submitted to inspection officials in support of its claim.

c. Submissions made vide email dated July 19, 2022-

i. *Mismatch in Total day end balance in all client bank accounts*
The bank statement submitted for one bank account initially submitted was incomplete and complete bank statement alongwith other two bank balance confirmation letter is submitted to the Exchange.

ii. *Mismatch in proprietary margin obligation*
The margin obligation of pro code was not considered while reporting. Emkay has revised the process and have started considering pro code while calculating proprietary margin obligation.

iii. *Mismatch in Margin utilized for positions of credit balance clients*

- Emkay has reported 20% of initial margin as per VaR and additional margin as per SEBI circular no. SEBI/HO/MIRSD/DOP/CIR/P/2020/146 dated July 31, 2020, in the CM segment, whereas inspection team has considered total margin.
- In the F&O segment, Emkay clears trades against which margin obligation was not considered and have submitted the "Detail margin file for Clearing Member" (MG12) in support of its claim.
- In the COM segment, Emkay has considered initial and other margin whereas Exchange has considered only initial margin.

iv. *Mismatch in Free/unblocked collateral deposited with clearing corporation*
The Exchange did not consider the free balance of Rs. 59,095,467/- Emkay has submitted copy of "Margin Payable Statement of Clearing Member" (MG 11) file supporting its claim.

v. *Mismatch in Collateral deposited with Exchanges in the form of Cash and Cash Equivalents and Value of non-funded portion of bank guarantee*
An amount of Rs.1.25 lakhs was erroneously considered under the head "Cash" instead of "Bank Guarantee".

d. The Committee finds as under:

i. Emkay claimed that inspection officials did not provide any workings or calculations for arriving at the differences reported during the inspection. The basis for arriving at the differences were provided by the Inspection team of the Exchange vide email dated January 12, 2022. Thereafter, Emkay Global, vide email dated July 11, 2022, sought the workings. In response, Exchange vide email dated July 12, 2022, provided the workings, and advised Emkay Global to submit a reply by July 14, 2022. Emkay Global, vide email dated July 19, 2022, submitted the details sought by the Exchange.

ii. Upon verification of the details submitted by Emkay, it has been observed that-

a. Regarding the mismatch in Total day end balance in all client bank accounts, the confirmation letters of 2 bank accounts pertain to September 30, 2021, whereas the incorrect reporting was observed as

of October 22, 2021. Hence the benefit of these accounts cannot be given to Emkay. For 1 bank account where Emkay has provided complete statement, benefit is extended. The revised irregularity amounts to Rs.10,964/-

b. Regarding the mismatch in proprietary margin obligation, Emkay has accepted the observation and has claimed to have rectified the process, post inspection. Post inspection compliance does not absolve Emkay from the violation committed. Therefore, the irregularity continues.

c. Regarding the mismatch in margins utilized for positions of credit balance clients:

   i. Emkay's claim that they have considered 20% of initial margin in the CM segment is not acceptable since as per Exchange circular no. NSE/INSP/37580 dated April 20, 2018, Member must consider margin requirement as per MG 02 file of the Exchange.

   ii. Emkay's claim that margin obligation was not considered in the F&O segment is not acceptable since as per Exchange circular no. NSE/INSP/37580 dated April 20, 2018, For Derivative Segment, Member has to consider MG13 (SPAN + Premium + Exposure) and MG-17 (ICMTM).

   iii. Emkay's claim that they have considered initial and other margin in the COM segment is not acceptable as benefit of total margin was not passed on to the client and hence member has been provided benefit of the same.

d. Regarding the mismatch in free/unblocked collateral deposited with the Clearing Corporation, there is no irregularity after considering the free balance in the Commodity segment.

e. Emkay has accepted the observation regarding the mismatches in Collateral deposited with exchanges in form of Cash and Cash Equivalents and Value of Non-funded portion of Bank guarantee.

f. After considering Emkay's submissions, irregularity continues in 5 areas with differences ranging from Rs.10,964/- to Rs.1.45 crores.

iii. The Exchange monitors the details submitted by the Trading Members as a part of its regulatory supervision, and any incorrect submission, therefore, defeats the purpose of regulation. As such, any incorrect reporting for reasons whatsoever is neither permissible nor acceptable. Hence, the Trading Members must verify the data before submission to the Exchange.

iv. Thus, by uploading incorrect data towards the weekly monitoring of clients' funds, Emkay has violated Exchange Circular No. NSE/INSP/33276 dated September 27, 2016.

e. In view of the findings as mentioned above, the Committee decided to levy a monetary penalty of Rs.25,000/- on Emkay for the observed violation in terms of Exchange Circular No. NSE/INSP/47457 dated February 15, 2021.

DECISION

8. In view of the above, the Committee levied the following penalties as indicated against each of the violations:

Sr. Nos	Committee's Findings	Prescribed penalty as per Exchange Circular No. NSE/INSP/47457 dated February 25, 2021, and Exchange Circular No. NSE/INSP/45899 dated September 30, 2020	Penalty Levied
a.	Emkay had misused the funds of credit balance clients to meet the settlement obligations of debit balance clients or for own purposes as of March 3, 2021, and March 4, 2021, involving Rs.26.83 crores and Rs.34.64 crores, respectively	Rs.1 lakh or 1% of the amount involved, whichever is higher.	No action

b.	Emkay did not maintain daily reconciliation statement for transfer of funds between own and beneficiary accounts in 100 instances wherein a net amount of Rs.99.35 crores were transferred from own bank to client bank account.	Rs.25,000/-	Rs.25,000/-
c.	Emkay had used the client bank account for the purposes other than specified to the extent of Rs.100.20 crores in 36 instances.	Rs.1 lakh or 1% of the amount involved, whichever is higher	Warning
d.	Emkay had uploaded incorrect data uploaded in the weekly holding statement in 3 instances involving Rs.4.27 crores.	Warning to Rs.1 lakh	Rs.25,000/-
e.	Emkay did not settle the funds and securities of clients in 45 out of 5536 clients constituting 1% of the total samples verified.	Less than 2% of the number of instances- Advice	Advice
f.	There was a delay in updating of KYC details on KRA portal in 7 instances.	Rs.15,000/- per client	No action
g.	Emkay did not resolve 1 client complaint within one month from the date of receipt of the complaint. (Was resolved in 43 days)	No prescribed penalty	No action
h.	Emkay had submitted incorrect data submitted towards weekly monitoring of client funds as of October 22, 2021.	Warning to Rs.1 lakh	Rs.25,000/-
TOTAL			**Rs.75,000/-**

9. Emkay is directed to pay a monetary penalty of Rs.75,000/- (Rupees Seventy-Five Thousand only) and to note the non-monetary penalties mentioned above.

Sd/ Mona Bhide (Chairperson)	Sd/- K Narsimha Murthy (Committee Member)	Sd/- Anuradha Rao (Committee Member)
Sd/- Ranganayakulu Jagarlamundi (Committee Member)	Sd/- Vikram Limaye (Committee Member)	

Date: August 16, 2022