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 October 7, 2022
In the matter of Trading Member
M/s. Profitmart Securities Private Limited

CORAM:

Ms. Mona Bhide	- Chairperson
Mr. K Narasimha Murthy	- Committee Member
Ms. Anuradha Rao	- Committee Member
Mr. Ranganayakulu Jagarlamudi	- Committee Member
Mr. Ashishkumar Chauhan	- Committee Member

PRESENT:

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

BACKGROUND

1. **M/s.Profitmart Securities Private Limited** ("**Noticee**") is a Trading Member registered with the National Stock Exchange of India Limited ("**Exchange**"/"**NSEIL**") and enabled for trading in the Capital Market ("**CM**") and Futures & Options ("**F&O**") segments since June 2012, and Currency Derivatives ("**CD**") segment since February 2013.

2. Pursuant to the MCSGFC directions vide interim order dated July 12, 2022, the Exchange appointed a forensic auditor to audit the books of accounts and records of the Noticee from April 01, 2019, to July 22, 2022 ("**Review Period**"). The forensic auditor submitted its final report on September 21, 2022. Post-audit, the Exchange issued a show-cause notice bearing reference NSE/INSP/CMFOCDS/LPI/SCN/14556 dated September 23, 2022 ("**SCN**") for the observed non-compliance with the regulatory provisions.

INSPECTION OBSERVATIONS/ALLEGED VIOLATIONS

3. The observations/alleged violations mentioned in the SCN are summarized hereunder:

3.1 Fixed periodic returns provided to the Noticee's clients directly and/or through its APs

a. Upon verification of the financial ledgers of 40 out of 747 clients having a frequency of 10 or more instances of fixed fund pay-outs involving potential periodic fixed payments aggregating to Rs.145.33 lakhs. Trends/patterns of periodic fixed funds pay-outs are observed in the case of 33 out of 40 clients having fund pay-outs frequency of 10 or above involving Rs.101.11 lakhs. Out of the said 33 clients, 32 clients are mapped to 8 APs of the Noticee, and the potential monthly payouts made to the said clients, range between 0.57% and 8%. The remaining 1 client is a direct client of the Noticee and the potential monthly payouts made to the said client is 2%.

b. It was observed that the Noticee's AP "Incofina Consultants LLP" ("Incofina") ran an assured return scheme namely "Inco Plus", soliciting a minimum investment of Rs.1 lakh from clients against an assurance of a quarterly return of 6.25%.

Upon verification of the financial ledger statements of the 16 clients mapped to Incofina, it was observed that in 8 out of 16 clients, the initial investment was more than Rs.1 lakh (as per 'IncoPlus' plan minimum investment was Rs.1 lakh) and the quarterly funds pay-out (paid within 90 to 98 days of the initial investment date) to clients was in the range of 5% to 10.30%. Further 2 out of the said 8 clients, the potential quarterly return was 6.25%, as specified in the 'IncoPlus scheme'.

In the show cause notice issued by the Exchange dated June 14, 2022, it was highlighted that the scheme document contained the name "Incofina Consultants LLP" and the weblink is provided on the web page as www.apnainvestor.com. Upon verification, it was further observed that the "contact us" page of Incofina's website i.e., "https://incofina.in/?page_id=273", has a reference to the page of "Apna Investor" along with email id as "info@apnainvestor.com", and contact number as: "+91-7385579049".

c. A public domain search of the social media websites (Facebook, Twitter, YouTube, Instagram, Telegram, LinkedIn) and news media (using Google strings) for the Noticee, its directors, 7 APs were potentially involved in the

practice of soliciting investments from its clients on assured/guaranteed return

d. Upon review of the email backup of 43 email ids provided in a Personal Storage Table (PST) file format by the Noticee, 994 relevant emails were found indicating assured returns/unauthorized trades in the client account, and excess brokerage charged to clients. The summary of the key themes is as per the table below: Key themes of email review observations:

i. 301 emails pertain to 23 complaints of assured returns offered/provided
ii. 392 emails pertain to 45 complaints of unauthorized trading in clients' accounts
iii. 301 emails pertain to 61 complaints of excess brokerage charged by Noticee.

3.2 It is further mentioned under the SCN that the Noticee has failed to reconcile the securities in the client beneficiary account vis-à-vis securities in the back-office account, the shortfall in securities, incorrect mobile numbers/email ids, and bank details uploaded in the Exchange's Unique Client Code ("UCC") database, non-maintenance of pre-order confirmation, improper maintenance of clients' ledgers, failure to inspect the books of active registered Authorised Persons as per the applicable guidelines and irregularities observed during the surprise inspection of the AP namely "Shital Sanjay Yadav".

PRELIMINARY RESPONSE OF THE NOTICEE

4. The Notice vide email dated October 1, 2022, and October 4, 2022, submitted its preliminary response as under:

a. In the interest of natural justice and fair play, the Noticee requested a holistic set of documents and annexure, to respond to the SCN issued by the Exchange.

b. The Noticee cited Hon'ble Supreme Court's order in T. Takano v. SEBI dated February 18, 2022 and stated that all material relied upon by the Exchange during the quasi-judicial proceedings must be disclosed to enable it to file a comprehensive defense against the allegations, in the matter.

c. The Noticee further stated that the forensic auditor's analysis is intricately interwoven with the statement of facts and forms the sole basis/foundation of the SCN. Since the facts cannot be disentangled from the SCN, it is essential for the Noticee to conduct a cross-examination of the relevant team of the forensic auditor (KPMG) to verify whether the statement of facts is correct or not and to holistically appreciate the underlying issue. In this regard it relied on

the decision of the supreme court in T. Takano v. SEBI, Andaman Timber Industries v. Commissioner of Central Excise, Bharat Jayantilal Patel v. SEBI, along with NSE Colocation case, wherein the Noticees including the Exchange were allowed cross-examination of the forensic auditors.

d. The Noticee further requested the inspection of documents, independent examination report prepared by the Exchange, forensic auditor engagement letter, interim report submitted by the forensic auditor, and copy of the statement recorded.

e. However, the Noticee had failed to check the email dated October 2, 2022, sent by the Exchange, whereby the Exchange had provided a link to all annexures and exhibits relied upon in the SCN.

PRESENT MCSGFC PROCEEDINGS

5. The Exchange granted the Noticee an opportunity for a personal hearing before the Committee in its meeting on October 7, 2022. Mr. P. N. Modi (Senior Counsel), Mr. Robin Shah (Advocate), Mr. Neville Lashkari (Advocate), Mr. Udaysingh Kashid (Advocate), Mr. Ayush Singh (Advocate), Mr. Nayan Bhandari (Director), Mr. Rakesh Sonawane (Director), Mr. Yesudasan Mahajan (Director), Mr. Niranjan Mahajan (Director), and Mr. Gaurav Kothari (Compliance Officer) appeared on behalf of the Noticee and made the following oral submissions before the Committee:

a. The Noticee submitted that all the relevant documents/annexures/exhibits etc should be provided to enable it to submit a suitable reply.

b. Since the SCN is based on the statements of the forensic auditor, the Noticee should be granted an opportunity to cross-examine the forensic auditor to establish the veracity of observations.

c. The Exchange is directed to provide the letter of appointment of the forensic auditor, so that the authorized purview of the forensic audit may be determined.

d. The Noticee originally requested a cross-examination of the auditor and later requested a meeting with Exchange officials or the forensic auditors, to identify the instances of violation, so as to enable it to respond to the SCN effectively.

e. The Noticee further submitted that appropriate disciplinary actions have been initiated against Authorised Persons mentioned in SCN.

f. The Noticee proposed that it shall not onboard any new APs until the final determination of the SCN and submit a declaration signed by all its new clients

confirming that the Noticee has not offered and shall not be providing any fixed/assured return.

PRELIMINARY OBSERVATIONS

6. The Committee noted as under:

6.1 The Noticee *inter alia* is charged with amongst other violations offering assured fixed periodic returns. The record shows that fixed payments were made to clients in 33 out of 40 clients having fund pay-outs frequency of 10 or above involving Rs.101.11 lakhs. Out of the said 33 clients, 32 clients are mapped to 8 APs of the Noticee, and the potential monthly payouts made to the said clients, range between 0.57% and 8%. The remaining 1 client is a direct client of the Noticee, and the potential monthly payouts made to the said client was 2%.

6.2 The observation regarding the Noticee's AP "Incofina Consultants LLP" ("Incofina") soliciting a minimum investment of Rs.1 lakh from clients against an assured quarterly return of 6.25% is prima facie established by the Forensic Report. This is more evident from the fact that in the case of 8 out of 16 clients, the initial investment was more than Rs.1 lakh and the quarterly funds pay-out to clients was in the range of 5% to 10.30%. Further, in the case of 2 out of the said 8 clients, the potential quarterly return was 6.25%, as specified in the 'IncoPlus scheme'. Further, the forensic audit has also a finding that the "contact us" page of Incofina's website i.e., "https://incofina.in/?page_id=273", has a reference to the page of "Apna Investor" along with email id as "info@apnainvestor.com", and contact number as: "+91-7385579049.

6.3 Further, A public domain search of the social media websites (Facebook, Twitter, YouTube, Instagram, Telegram, LinkedIn) and news media (using Google strings) for the Noticee, its directors, 7 APs were potentially involved in the practice of soliciting investments from its clients on assured/guaranteed return.

6.4 The Exchange issued two show-cause notices dated May 9, 2022, and June 14, 2022, *inter alia* for the observations pertaining to assured/fixed returns offered/provided by the Noticee and/or its Authorized Persons. The said show cause notices were determined by the Committee vide its order dated August 11, 2022, whereby the Noticee was prohibited from onboarding new clients and APs for two months from the date of said order along with monetary penalty and other directions.

6.5 The Committee finds that the Exchange vide its email dated October 2, 2022, has already provided the Forensic Audit report along with all the annexures and

exhibits to the Noticee and therefore the arguments and case law presented by Counsel do not apply in the present case.

6.6 Without going into the merits of the Noticee's request for cross-examination of the officials involved in the forensic audit, the Committee acceded to Noticee's request for a meeting with the Exchange officials to reconcile/identify/clarify the instances of violation, annexures, and exhibits of the SCN and the forensic audit report.

6.7 SEBI has put in place a framework for Market Access through APs pursuant to the recommendations made by the Secondary Market Advisory Committee of SEBI. The said framework is notified by SEBI vide its circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009. The said framework casts a regulatory obligation on the Trading Members, and it shall be responsible for all acts of omission and commission of its Authorized Person(s) and/or employees, including liabilities arising therefrom.

DECISION

7. In view of the foregoing, the Committee issues the following interim directions:

a. The Noticee shall withdraw the registration of all 8 Authorized Persons, who offered assured return schemes on the public domain and all other actions as advised by SEBI in terms of SEBI Circular No. MIRSD/ DR-1/Cir-l6/09 dated November 6, 2009.

b. The Noticee shall submit an undertaking that they shall not onboard a new Authorised Person until the final order.

c. The Noticee shall collect a written undertaking from all its clients at the time of onboarding new clients stating that the Noticee has not offered any assured return schemes, the client shall agree not to demand any such assured return from the Noticee, and that the Noticee has explained the risk involved in trading in the securities market.

d. The Exchange shall provide the inspection/clarification as sought by the Noticee vide their letters of October 1, 2022, and October 4, 2022, to the extent of clarification, etc. relating to the Annexures/exhibits relied upon in the Show Cause Notice dated September 23, 2022.

e. The Noticee shall submit its reply within 3 weeks from the date of meeting with the Exchange officials.

f. Noticee shall conduct a concurrent audit and submit a fortnightly certificate to certify that the clients of the Noticee are not being offered assured/fixed returns for the next six months.

g. The Noticee shall review its inspection process followed with respect to 8 Authorized Persons mentioned in the Show Cause Notice dated September 23, 2022, as required under the Exchange circular No. NSE/INSP/42448 dated October 18, 2019, and NSE/COMP/50030 dated October 21, 2021. The Noticee shall identify the root cause analysis for failing to detect such a major violation of Regulation and Circulars and submit a report indicating the corrective action that has been taken by the Noticee in strengthening the inspection process of the Authorised Persons including detection and prevention of Assured returns offered by AP and submit the said report to the Exchange within 3 weeks from the date of this order.

Sd/-	**Sd/-**	**Sd/-**
Mona Bhide	**K Narsimha Murthy**	**Anuradha Rao**
(Chairperson)	(Committee Member)	(Committee Member)

Sd/-	**Sd/-**
Ranganayakulu Jagarlamundi	**Ashishkumar Chauhan**
(Committee Member)	(Committee Member)

Date: October 13, 2022