

L/ENF/SS-3087/IR/Offsite/2024-2025/888

October 18, 2024

Compliance Officer and Designated Directors  
**Kunvarji Finstock Pvt. Ltd. (Clg. No.3087)**  
Block -B, 1st Floor, Siddhivinayak Towers  
Off S.G. Highway Road, Mouje Makarba  
Ahmedabad-380051

Dear Sir /Madam,

**Sub: Final letter pertaining to offsite alert generated in FY 2024-25**

Please refer to **Annexure A** to this letter with the details of non-compliances observed by the Exchange after taking into consideration the submissions and clarifications offered by you. You are also advised to take necessary steps to ensure that such non-compliances do not recur.

A penalty of **Rs. 1,32,912/- (Rupees One Lakh Thirty Two Thousand Nine Hundred Twelve Only)** is being imposed on you for non-adherence to the regulatory requirements pursuant to the Exchange Notice No. 20180214 - 31 dated February 14, 2018. The penalty will be debited to you through the General Charges Bill. However, if you are aggrieved by the penal action described in the aforementioned paragraph, you may submit a request within a time frame of 10 working days from the date of this letter along with additional information that is material and relevant to substantiate the grounds of waiver and a request for personal hearing, if required, in support of your request.

All correspondence/email in this matter shall be with subject line "*Reply to Final Action Letter <name of the Trading Member> - <Clg. No.> FY 2023-24*" and is to be marked to the mail id [Enforcement@bseindia.com](mailto:Enforcement@bseindia.com).

It may further be noted that any representations made after the lapse of the 10 working days period from the date of this communication shall not be considered by the Exchange and no further extension shall be granted to file a request for seeking waiver from the Exchange.

If the Exchange does not receive any representation from the Trading Member within the prescribed time frame it will be presumed that the Trading Member does not have any objection and has agreed to pay the penalty to the Exchange.

We thank you for your co-operation.  
Yours faithfully,



**Vandana Vania**  
Asst. Gen Manager  
(Enforcement)



**Shaila Menon**  
Asst. Gen Manager  
(Enforcement)

**Annexure A**

<b>Name of the Member</b>	<b>Kunvarji Finstock Pvt. Ltd</b>
<b>Clearing Number</b>	3087
<b>Inspection Year</b>	FY 24-25
<b>Date / period of inspection</b>	January 16 2024

**a) Details of Non-Compliance observed after considering the responses provided, where monetary penalty is applicable:**

1. On Verification of the Bank Balance, Collateral lying with the Clearing Corporation in the form of Cash and Fixed deposit and Creditors Balance, shortfall in client fund to the tune of Rs. 1.42 Crs was observed, resulting misuse of clients' funds on January 16, 2024. The details are as under:

<b>Bank Balance (A)</b>	<b>Collaterals (CC+CM) (B)</b>	<b>Total Creditors (C)</b>	<b>G=(A+B)-C</b>
67,24,895.93	1,71,01,71,866.64	1,73,11,88,054.69	-1,42,91,292.12

**Response of the Member is as follows:**

We have for reference and acknowledgement of your captioned letter alleging shortfall in client funds to the extent of Rs. 1.42 Crores on 16.01.2024 as computed by BSE. We understand that the allegation is based on provisions of SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated 26.09.2016.

We request you to consider the following facts available on record with BSE and other Stock Exchanges as well:

- Enhanced Supervision reporting requirement, as a concept was first brought in vide SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated 26.09.2016. One of the avowed objective of SEBI as stated vide point No. IV of the said circular (page No. 2) is as under: Monitoring of Financial Strength of Stock Brokers by Stock Exchanges so as to detect any signs of deteriorating financial health of stock brokers and serve as an early warning system to take pre-emptive and remedial measures.
- SEBI redefined the definition of G principle vide SEBI Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2024/03 dated 12.01.2024 as under :

“G Principle: The total available funds i.e. cash and cash equivalent with the stock broker and with the clearing corporation/clearing member should always be equal to or greater than clients' funds as per the ledger balance.”

- SEBI defined the Cash and cash equivalent in clause 3.2(B) vide SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated 26.09.2016: Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.

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- Hence Principle G By comparing moneys due to creditor clients with money owned by Stock Broker (in the form of client bank account balances and cash & cash equivalent deposited with Exchanges, CCs and CMs, only funded portion of BG was to be considered).
- This computation accurately computes level of solvency of the Stock Broker in case of abrupt closure of business of the Stock Broker.
- Accordingly, a detailed analysis of the data provided by BSE was done and we observed that the funded portion of BG and deposits lying with Exchanges were not considered as an “eligible asset” for computation of “G” balance thereby refusing to consider some vital assets for ascertaining our solvency as a Stock Broker on 16.01.2024.
- The details of the funded portion of BG as on 16.01.2024 are as under:

Trade Date	Alleged negative “G” balance	Funded portion of BG lying with CC/CM and Deposit lying with Exchanges
16.01.2024	-1,32,91,292.12	75,38,12,500.00 (Funded Portion of BG) 2,25,00,000.00- (Deposit lying with Exchanges)

- We are enclosing herewith a Statement for the balance available with Exchanges and Clearing Corporation and Clearing Member.
- We would also invite your kind attention to the provisions of the SEBI circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/061 dated 25.04.2023 which prohibits Stock Brokers not to get FDRs for availing BG out of client funds. It also stipulates that FDRs used for placing as collateral for BG if made out of client funds, the same was required to be unwound by 01.10.2023. None of our FDRs pledged with banks for availing BGs has been made out of client funds.
- The said circular nowhere states that funded portion of BGs, which essentially is the value of FDRs placed as collateral with bank for availing a BG, shall not be considered as “eligible asset” for computing the solvency of a Stock Broker by calculating “G” balance. Despite that being the case, BSE has issued a circular No. 20231107-1 dated 07.11.2023 drawing its own inference and stated that “In view of the aforesaid circulars, member cannot create BG out of clients’ funds and accordingly, value of any BG including BG created out of members’ own funds cannot be considered for the computation of availability of client payables effective from October 01, 2023”.
- SEBI had, thereafter, issued a circular No. SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/03 dated 12.01.2024 which states as under:
  - Stock exchanges shall put in place a mechanism for monitoring of clients’ funds (‘G’ principle) lying with the stock brokers on the principle enumerated below:
  - G Principle: The total available funds i.e. cash and cash equivalent with the stock broker and with the clearing corporation/clearing member should always be equal to or greater than clients’ funds as per the ledger balance” The above SEBI circular dated 12.01.2024 sticks to its definition of funds available with stock broker as “cash and cash equivalents with Stock Broker and with CC/CMs” and does not exclude the funded portion of BGs.

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- Thus, there is distinct difference between how SEBI defines “cash and cash equivalents” without excluding funded portion of BGs (availed against FDRs created out of Stock Broker’s own funds); and how BSE has amended its definition vide its notice No. 20231107-01.
- Without prejudice to the above, we submit that the abrupt decision not to consider deposits lying with Exchanges and funded portion of BG as eligible asset for computing “G” is ironical and entirely illogical. If a Stock Broker deposits its proprietary funds with Exchange and CC/CM either in the form of cash or FDR, the same forms part of eligible asset. If the same funds are placed in FDRs to avail BG and such BG are deposited, based on which rational, the funds portion of BG is not considered as eligible asset for computing “G” balance.
- Without prejudice to the above, after having realized the changed stance of NSE with respect to the computation of “G” and disallowing the Deposit lying with the Exchanges and funded portion of BG, we have promptly taken corrective steps. Our “G” balance as reported I Enhanced Supervision weekly reporting for trade date 17.01.2024 is positive.
- We submit that, ever since the implementation of Enhanced Supervision reporting since July, 2017, there has never been any instance where we have received any observation from any Stock Exchange for an alleged violation of any of these three cardinal principles enshrined in Securities Laws and enshrined vide SEBI circular dated 26.09.2016. Even during SEBI inspection of our books of accounts and other records covering inspection period 01.04.2017 to 30.09.2018, the charges for misutilization of client funds and assets, though made in Findings of Inspection, were later disposed of in adjudication proceedings, without any adverse findings against us.
- Without prejudice to the above submission, we submit that, for the same alleged violation, NSE has already initiated proceedings against us culminating into penalty being imposed on us vide its Administrative Action dated 05.03.2024 whereby our funds of Rs. 1,32,91,292/- have been blocked for the period 07.03.2024 to 22.03.2024 by way of penal action. NSE has also issued offsite inspection observation letter No. NSE/INSP/CMFOCDS/OFFSITE/23-24/LO/10195/2024-36936 dated 04.03.2024 communicating indicative/Expected penalty of Rs. 2,65,820/-. The copy of email from NSE dated 05.03.2024 is enclosed herewith together with NSE Offsite Inspection observation letter No. NSE/INSP/CMFOCDS/OFFSITE/23-24/LO/10195/2024-36936 dated 04.03.2024 is enclosed herewith vide Annexure -2.
- It is our humble submission that, since we are already penalized by NSE for the alleged violation being negative “G” balance dated 16.01.2024, considering the dictum of not to inflict double jeopardy, BSE may not impose and penalty for the same offence. Our request may not be construed as a challenge to BSE’s powers of enforcement and levying penalty, but the same should be viewed as request for leniency and not to penalize for same violation twice.
- We request BSE to view the matter leniently and to conclude the proceedings without imposing any penalty or taking any penal action. If BSE proposes to levy any punitive penal action, we request you to kindly afford us an opportunity for a personal hearing before the competent authority.

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**Analysis:**

Based on Member submission following is noted:

1. The Member has considered funded portion of BG lying with CC/CM for computation of Principal G. it is to be noted that the Exchanges have totally prohibited considering BGs towards computation of Principal G from November 07, 2023 onwards, however, in terms of Exchange notice no. 20231107-1 dated November 07, 2023, FAQ on Bank Guarantees created out of Clients' funds point 4 states that  
*"as Member cannot consider the value of any BG including BG created from own funds for the purpose of computation of availability of clients' funds, member should not include value of any BG including BG crated out of own funds while reporting value under data point no. 2 viz., "collateral deposited with Clearing Corporation in the form of Cash and Cash Equivalent (in Rs) and data point numbered as 3 "collateral deposited with CM in the form of Cash and Cash Equivalent in Rs" of Annexure A of BSE notice number 20220624-45 dated June 24, 2022".*
2. NSE also pointed out this non-compliance of negative Principal G to the tune of Rs. - 1,32,91,292.12 as on January 16, 2024.

The said non-compliance was informed to the Member vide email dated October 10, 2024, and the Member was requested to provide his comments along with documentary evidence showing compliance, if any. The Member was also informed of the applicable monetary fine. The Member vide email dated October 10, 2024, and October 15, 2024, submitted its reply. However, has not made any fresh submissions showing compliance.

**Decision:**

A penalty of Rs.1,32,912/- ( Rupees. One Lakh Thirty-Two Thousand Nine Hundred Twelve Only) is levied for use of funds of credit balance clients towards settlement obligation of debit balance clients/ Own obligation.

You may please refer to SEBI circular Ref no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, issued vide Exchange Notice No. 20160927-41 dated September 27, 2016, and 20161020-17 dated October 20, 2016, SEBI circular Ref no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 issued vide Exchange notice 20170623-14 dated June 23, 2017 and 20170925-34 dated September 25, 2017.

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