

ADJUDICATION ORDER NO. EAD-8/JS/SP/28/2018-19

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of Geojit Financial Services Ltd. (PAN AABCG1935E) (CIN-L67120KL1994PLC008403) in the matter of Mr. Imtiyazhusain Saiyedmohamed Saiyed and Imtsons Investments Ltd.

BACKGROUND

1. Securities Exchange Board of India (**'SEBI'**) carried out investigation of trades of Mr. Imtiyazhusain Saiyedmohamed Saiyed (**'Mr. Saiyed'**) and Ms. Riyazunnisa Imtiyazhusain Saiyed (**'Ms. Riyazunnisa'**), wife of Imtiyazhusain Saiyed, clients of Geojit Financial Services Ltd (earlier known as Geojit Securities Ltd.) (**'Geojit/Noticee'**), Stock Broker, National Stock Exchange (NSE) and Bombay Stock Exchange (BSE) in the matter of Mr. Imtiyazhusain Saiyedmohamed Saiyed and Imtsons Investments Ltd. for the period April 2007 to June 2011 (**'IP/Investigation Period'**).
2. Investigation revealed that Geojit had delayed in filing Statement Transaction Report (**'STR'**) with Financial Intelligence Unit, Government of India (**'FIU'**) of Mr. Saiyed and failed to file STR with FIU of Ms. Riyazunnisa. Also, Geojit failed to exercise proper due-diligence while dealing with client.
3. In view of the above, SEBI initiated adjudication proceedings against Geojit to inquire and adjudge under section 15HB of SEBI Act, 1992 (**'SEBI Act'**) for alleged violation of SEBI Master Circular SD/AML/CIR-1/2008 dated December 19, 2008, SEBI Circular ISD/AML/CIR-1/2009 dated September 01, 2009 read with SEBI Master Circular CIR/ISD/AML/3/2010 dated December 31, 2010 and Clause A(1) and (2) of the Code of Conduct for Stock Broker as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992 (**'Stock Broker Regulations'**).

APPOINTMENT OF ADJUDICATING OFFICER

4. Adjudicating Officer was appointed vide order dated October 10, 2017 under Section 15-I read with Section 19 of the Securities and Exchange Board of India Act, 1992 (**'SEBI Act'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (**'SEBI Adjudication Rules'**) to inquire into and adjudge under Section 15HB of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (**'SCN'**) in terms of provisions of Rule 4 of SEBI Adjudication Rules read with Section 15I of SEBI Act was issued on December 15, 2017 to

Geojit calling upon the noticee to show cause as to why an inquiry should not be held against it under Rule 4 of the SEBI Adjudication Rules and penalty be not imposed for the alleged violation.

6. The SCN was duly delivered to Geojit. The Noticee vide email dated January 15, 2018 has filed reply to the SCN, the details are as follows:
- a. *During 2009-10 Axis Bank Ltd (**Axis Bank**) introduced Mr. Imtiyaz Husain Saiyed Mohmmmed Saiyed and Ms. Riyazunnisa Saiyed, bank account holders of Axis Bank to us. After scrutinizing both KYC documents the Unique Client Codes ("**UCC**") were generated and their online trading accounts were opened on May-2009 and February 2010 respectively.*
 - b. *The online trading account of Mr. Imtiyaz was linked to his Bank A/c No. 297010100094647 and Demat Account No. IN300484-13531807 with Axis Bank and the online trading account of Ms. Riyazunnisa Saiyed was linked to her Bank A/c No.297010100098519 and Demat Account No IN300484-13738360with Axis Bank. It is submitted that when the client used to trade/place order through us, the required funds/securities was blocked in the said bank/demat account of the client. When funds were due to the client, we made payment through online transfer to his/her said Bank Account and when funds were due to us, it used to get transferred to us through online transaction. Mr. Imtiyaz and Ms. Riyazunnisa Saiyed never traded in Equity/Cash Segment. They traded only in Derivative segment and their transactions used to get settled as stated above At all points of time we have abided by our PMLA policy. Here we may point out that during the period from 2009-2010 we had notified various transactions of our clients for inconsistency in trading with their financial details given in the KYC, to the Principal Officer ("**PO**").,The PO had after analysing the alerts concluded suspicion in 10 cases which were reported to the FIU.*
 - c. *It is submitted that though Mr. Imtiyaz opened the client code in May-2009, he started trading with us from November 27, 2009 and his last transaction with us was on June 07, 2010. He traded with us for six months. During this time we had noticed that his trades were not in consonance with the income disclosed in his KYC form although his networth declared was in the highest available slab of >50 lakhs as prescribed by SEBI in the KYC form. Thereafter, we tried to reach him to update his KYC details but we did not receive any response from him so we put him on watchlist.*
 - d. *However, the Principal Officer did not find that the transactions of Mr. Imtiyaz were suspicious due to the following reasons:*
 - (i) *That the net worth details disclosed in the KYC form was in the highest available slab of above 50 lakhs.*
 - (ii) *Mr. Imtiyaz was aged 55 years at the time of enrolment giving out an impression of years of business activity and during the relevant time he was the Proprietor of an Investment concern titled "Waft Investments".*
 - (iii) *That there was no delivery based trading. Exposure availed was on the basis of strict margins.*
 - (iv) *That the large funds brought in on certain days were not fresh investments but was a reinvestment of what was earlier taken out by him.*
 - (v) *That the internal alerts generated per se are not suspicious in nature but were only automatic alerts that we had internally created through our systems based on certain thresholds of transactions. All alerts that the system generates, are not reported to the FIU. The alerts are analyzed and processed before coming to a conclusion of suspicion by the PO.*
 - e. *Thereafter, in June 2010, NSE conducted limited purpose inspection for the trading activities of the client Mr.Imtiyaz. NSE pursuant to its inspection, instructed us to sever the trading relationship with Mr. Imtiyaz (Client Code -UT1218) with immediate effect. Subsequently, we suspended the account of Mr. Imtiyaz. As the client was on our Anti Money Laundering ('AML') watchlist and based on the concerns raised by NSE, the PO's*

suspicion was confirmed and we filed an STR with respect to the transactions of the client to FIU.

- f. In so far as trading of Ms. Riyazunnisa Saiyed is concerned it is submitted that during the relevant time there was nothing to indicate any suspicious activity in her trading account and hence no STR was filed with respect to her transaction during November 2009 to April 2010.

Alleged Violations

- g. In the Notice, it has been alleged that the turnover figure of Mr. Imtiyaz and Ms. Riyazunnisa Saiyed was disproportionate to their income mentioned in their KYC forms and that we had delayed to file STR with FIU with respect to Mr. Imtiyaz and failed to file STR with FIU with respect to Ms. Riyazunnisa Saiyed, in terms of the Prevention of Money Laundering ('PMLA') policy framed by us. In this regard we submit that:
- i. Mr. Imtiyaz had traded with us only for six months and did not place any offline orders. Whenever he had taken high exposure we had sufficient margins with us. The same is evident from the ledger statement during the period from 2009- 10 and 2010-11. Copy of the ledger statement during the period from 2009- 10 and 2010-11 is enclosed as **Annexure A**. As per SEBI's KYC format the financial details of a client include both Annual Income and networth. During this time we had noticed that his trades were not in consonance with the annual income (between Rs 1 lakh and 5 lakhs) disclosed in his KYC form although his networth declared was in the highest available slab of >50 lakhs. In the light of repeated alerts during this period, we placed him on our AML watchlist and tried to reach Mr. Imtiyaz to update his KYC details but we did not receive any response from him. However, the Principal Officer did not find that the transactions of Mr. Imtiyaz are suspicious due to the reasons set out in Para herein before.
 - ii. Thereafter, during the inspection conducted by NSE in June 2010, NSE directed us to suspend the trading account of Mr Imtiyaz and we suspended the same. As Mr. Imtiyaz was on our AML watchlist and based on the concerns raised by NSE, the PO's suspicion was confirmed and we filed an STR with respect to the transactions of the client to FIU.
 - iii. It is submitted that we have not contravened our PMLA Policy. As per our policy during the relevant time, any transaction, suspicious in nature i.e. unusually large volumes or increase in business in contradiction with the declared networth and annual income of the client shall be immediately notified to the PO.
 - iv. In the present case, the alerts for the unusual volumes were generated by our system. The said alerts were analysed and discussed with the PO without any delay, for obtaining his decision on the action to be taken and the same was under PO's observation. The PO decided to continue the client on the watchlist. Hence as per policy we have immediately notified the alerts to the PO and the details formed a part of the STR as stipulated.
 - v. In so far as allegation pertaining to Ms. Riyazunnisa Saiyed is concerned, it is submitted that during the relevant time there was nothing to indicate any suspicious activity in her trading account and hence no STR was filed with respect to her transaction during November 2009 to April 2010. During both the years her transactions were in line with her disclosed annual income and net worth. In any event there has been no trading in her account since June 2010. Therefore, it is denied that we failed to intimate FIU regarding suspicious trading of Ms. Riyazunnisa Saiyed in terms of the PMLA as alleged.
 - vi. From the aforesaid, it is evident that there was no delay in filing the STR with FIU for the transactions done by Mr. Imtiyaz and there was no failure to intimate FIU regarding suspicious trading of Ms. Riyazunnisa Saiyed. Thus, in the circumstances, it is denied that we have violated the provisions of SEBI Master Circular SD/AML/CIR-1/2008 dated December 19, 2008, SEBI Circular ISD/AML/CIR-1/2009 dated September 01, 2009 read with SEBI Master Circular CIR/ISD/AML/3/2010 dated December 31, 2010 and Clause A(1) and(2) of the code of Conduct for Stock

Brokers as specified under Schedule II read with Regulation 7 of the Brokers Regulation.

- h. It is submitted that the alleged violations in the Notice are merely technical, venial and procedural in nature. As a result of the alleged violations, we have not made any gains or derived any unfair advantage. We are committed to complying with the law and request that the alleged procedural lapses be seen in the context of our overall scale of operations handled by us and the various compliance measures adopted by us. In the circumstances, no action is warranted.
- i. With regard to the alerts generated in our system, we would like to highlight the following factors for your consideration:
 - i. That the internal alerts generated are only automatic alerts that we have internally created through our systems based on certain thresholds of transactions. For eg; a cash transaction alert is set for over Rs. 25 lakhs/a trade delivery alert is set above 3 crore/a derivative transaction volume alert set in the system for over 25 crore etc. These are only alerts based on thresholds we have set, for further analysis. These alerts per se are not suspicious in nature.
 - ii. All alerts that the system generates, are not reported to the FIU. The alerts are analyzed and processed before coming to a conclusion of suspicion by the PO. The PO is guided by a consideration of all other available information regarding the client and his transactions from relevant sources including the client's financials (including annual income and networth), his stated occupation, KYC status, trading pattern of the client etc to conclude as to suspicious activity. We have ensured the application of mind by the PO to analyse and review the alerts before arriving at a conclusion as to whether a transaction is suspicious. This is in accordance with the guidelines prescribed by the FIU to intermediaries for detecting suspicious transactions under the PML Rules.
 - iii. The purpose of filing the STRs will not be met if each and every alert by the system based on thresholds set is straightaway reported to the FIU, without actually corroborating the suspicion with the client's stated occupation/ funds brought in/deviation in trading pattern/ any other relevant detail observed during review etc. This will only entail in the filing of numerous STRs without the actual application of mind or the arousing of suspicion.
- j. With regard to the allegation that we have failed to exercise due diligence while dealing with the client IIL as alleged, it is submitted that we have no client named IIL and we are not aware of any IIL. Therefore, the said allegation is false, baseless and contrary to the factual position.
 - i. Even concerning diligence with respect to Mr Saiyed and Ms Riyazunnisa Saiyed we affirm that we have exercised due diligence both at the time of account opening and during the transactions. Neither during the account opening nor during the transactions have we come across any regulatory/civil action against these persons indicating that they should not be on boarded or the relationship with them to be discontinued in terms of the circulars issued by SEBI on AML.
- k. It is submitted that, even in the past for the similar procedural/technical violations, regulators and exchanges had merely issued warning to the brokers. In this context we invite your attention to the following Orders passed by SEBI, wherein similar procedural/technical violations were condoned by SEBI and it had issued simple warning to the brokers, as stated in Order passed by Hon'ble Securities Appellate Tribunal in the matter of Chona Financial Services Pvt Ltd vs SEBI (Appeal No 95 of 2003).

l. M/s. Bakliwala Investment Irregularities

Provision for Tax for the interim period from April 1 to September 30, 2000 not made; Confirmations have not been obtained from Banks, Creditors and debtors by the broker; Broker had not time stamped the order slip/records; Contract notes not serially

numbered except for computer generated numbers on day-to-day basis which have no control; Contract notes not issued within the specified time; Consolidated stamp duty not paid; Client Registration forms were not completed; Order book was not maintained; Delay in payment of funds; Delay in delivery of securities; One client account being adjusted against another client without any authorization; Transactions with associate firms/companies separate set of ledger accounts as clients and others not maintained; Compliant register not maintained; Client accounts were used for other purposes; Margin money not collected; In 10 cases, deals were done outside the NEAT System.

Order

- Irregularities are basically technical lapses and do not deserve a substantive punishment.
- Minor Penalty – Warning

II. M/s. J.M. Morgan Stanley Retail Services Pvt. Ltd.

Irregularities

Failure to obtain client registration forms and agreement; Failed to maintain separate client account.

Order

Warning

III. M/s. Bama Securities

Irregularities

Contract notes were missing; Acknowledgement from the clients not obtained; Not maintaining client registration forms

Order

Warning

IV. M/s. Ratanbali Capital Markets Ltd.

Irregularities

Non-maintenance of books of accounts; Contract notes; Non-collection of margins from clients; Misuse of client's funds; Share lending/borrowing; Non-segregation of clients accounts with own account and for not reporting off-the-floor transactions to Stock Exchange

Order

Warning

V. M/s. Twenty First Century Shares & Securities Ltd.

Irregularities

Non-maintenance of books of accounts; Delay in payment to clients; Misuse of client's funds; Non-segregation of clients accounts with own account and for not reporting off-the floor transactions to Stock Exchange; Booking payment in different clients account; Loan against shares of holding company and loan transaction in clients account.

Order

Warning

VI. M/s. Sanjay C. Bakshi

Irregularities

Not maintaining margin registers; Dealing with unregistered sub-brokers; Not entering into agreement with few clients ; Non-segregation of clients funds with own funds; Dealing with broker of other Stock exchange without getting registered as a sub-broker; Irregularities in respect of contract notes; Delay in payment/delivery of funds/shares to clients

Order

Warning

VII. M/s. Mahesh Kothari Share & Stock Brokers Pvt. Ltd.

Irregularities

Non-maintenance of books of accounts; Dealing with unregistered sub-brokers; Irregularities in issuance of contract notes; Non-segregation of clients account with own account, misuse of client's fund; Delay on delivery of securities and not reporting off the floor transactions

Order

Warning

VIII. M/s. MukeshSawhany

Irregularities

Non-maintenance of document registers; Irregularities in issuance of contract notes; Non-maintenance of separate client account; Non-segregation of separate client account with own account; Not reporting off the floor transactions; Non redressal of investor complaints.

Order

Warning

- l. In this context we also invite your attention to the following observations of Hon'ble Securities Appellate Tribunal-

Order dated 16.6.2011 in the matter of Religare Securities Ltd vs SEBI :

- m. "It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant....."

Order dated July 25, 2011 in the matter of UPSE Securities Ltd. v/s SEBI

- n. "the object of carrying out inspection of the books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity/deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity..."

Order dated 16.06.2017 in the matter of Indiabulls Mutual Fund passed by the Adjudicating Officer, SEBI:

"Though there has been a procedural lapse on part of Indiabulls of not taking approval of trustee and not publishing addendum for declaring the dividend on 4 instances, I do not find from the inspection report that it is a repetitive irregularity on part of the noticees. Further the observations made in inspection report are procedural in nature and corrective measures are taken by Noticees on being pointed out by the inspection team. No observations are made in inspection report as to whether investors' interests have adversely affected on account of procedural lapse on the part of Noticees."

- o. It is further submitted that while considering our submissions, we humbly request you to take into account that we have not violated the regulations /circulars cited in the SCN that would invite the penal provisions under Section 15 HB of the SEB Act 1992. Admittedly, there is no finding/observation that we had indulged in any kind of fraudulent, manipulative or unfair trade practices in the market. Further, we have not indulged in any manipulation.
- p. The alleged technical lapses were not deliberate and intentional and in contumacious disregard of provisions of law. Further, we have not indulged in any manipulation.
- q. Here it may be pertinent to point out that reputation of a person is always a matter of great importance to him. Reputation is not built or acquired in a day but it takes long years and sustained good work, conduct and sound integrity, which builds up the reputation of a person. In the instant case it is submitted that we have been in the business of Stock Broking since 1987 and over a period of 31 years, we have built a very strong reputation and if any action is proposed against us, the same would adversely affect us and would besmirch our reputation, as stated herein before.

- r. *In view of the foregoing submissions, we repeat, reiterate and submit that we had conducted our business and operations as a Stock Broker bonafide and in compliance with SEBI Regulations, Circulars/Master Circular issued by SEBI and have not acted in disregard of statutory compliances. It is respectfully submitted that, we have not committed any violations, warranting any action and therefore it is humbly prayed that the Notice be discharged.*
 - s. *With regard to the observations regarding imposition of monetary penalty in the Notice, it is submitted that in the facts of this case no penalty be imposed. While considering our submissions, following factors in consonance with Section 15J of the SEBI Act be taken into consideration:*
 - i. *That the alleged violations are at the highest a technical, procedural and venial breach.*
 - ii. *That the alleged violations are not deliberate and intentional and in contumacious disregard of provisions of law.*
 - iii. *That during the relevant time there was no investor complaints in respect of Mr.Imtiyaz and Ms.Riyazunnisa Saiyed.*
 - iv. *That the alleged violations have not caused any loss to any investor or the securities market in any manner. Same has not been even alleged.*
 - v. *That as result of alleged violations we have not made any gain or gained any unfair advantage. The same has not been even alleged.*
 - vi. *That, it is assured that we will continue to scrupulously abide by the provisions of the SEBI Act, Rules and Regulations.*
 - t. *In the facts and circumstances, any imposition of penalty on us would be unjustified and unwarranted. In view of the foregoing submissions, it is humbly prayed that the Notice be discharged and no penalty be imposed.*
 - u. *We reserve our right to modify and add additional grounds in our reply and also crave leave to refer to rely on documents as and when produced.*
7. Geojit sought an opportunity for the personal hearing in the matter, which was granted vide letter January 16, 2018 for personal hearing on February 06, 2018.
8. On the date of hearing, employees and legal representatives attended the hearing and reiterated the written submissions made. The noticee in support of its contention was required to provide the details of reinvestment of funds made by Mr. Saiyed.
9. Pursuant to hearing, Geojit vide letter dated February 14, 2018, filed written submission and the details are as follows:
- a. *With regard to trades of Mr. Imtiyaz, it may be noted that at the relevant time the automatic alerts generated by the system were analysed, discussed and subjected to proper scrutiny at two different levels of verifications. Thereafter, the alerts were escalated to the Principal Officer for taking a decision as to whether the transactions, in respect of which alerts have been generated, qualify as suspicious transactions, warranting reporting requirements. The Principal Officer had also subjected the transactions to scrutiny at his end. It may be noted that the trades of the client were kept under observation/watch-list. Further, the client was also pursued for updating his KYC details. At the relevant time, the Principal Officer based on his assessment of the transactions was of the opinion that the transactions of the client do not qualify as suspicious transactions inter alia due to following reasons: (i) That the net worth details disclosed in the KYC form was in the highest available slab of above 50 lakhs; (ii) That Mr. Imtiyaz was aged 55 years at the time of enrolment giving out an impression of years of business activity and during the relevant time he was the Proprietor of an Investment concern titled "Waft Investments"; (iii) That there was no delivery based trading. Exposure availed was on the basis of strict margins; (iv) That the large funds brought in on certain days were not fresh investments but was a reinvestment of what was earlier taken out by him. However, subsequently since NSE directed us to stop the trading on behalf of the client, the Principal*

- Officer formed the opinion that the transactions executed by the client qualify as suspicious transactions and accordingly filed the STR with FIU.
- b. It may be noted that the role of Principal Officer is exceedingly complex, sensitive and requires proper decision making in terms of branding the transactions as "suspicious transactions". The Principal Officer cannot report every transaction, in respect of which automatic alerts are generated by the system, to FIU. Before branding the transactions as suspicious, the Principal Officer views the antecedents of the clients (as reflected in the KYC etc) and the transactions executed holistically. Only once he is satisfied about the suspicious nature of the transactions, after taking into account all the surrounding relevant factors, he reports the same to FIU.
 - c. Needless to state, that every transaction which is reported to FIU as suspicious transaction has severe consequences from the perspective of the client and can put the client to grave inconvenience. Therefore, the scrutiny at the end of the Principal Officer is consciously broader and deeper. In such cases, involving formation of opinion, a hidebound or text book approach cannot be taken by the Principal Officer. He has to take into account multiple factors and also the ground realities. Clearly, the burden on the Principal Officer is onerous and he has to decide and act carefully and responsibly. In the instant case, as stated hereinbefore, the Principal Officer taking into various circumstances could not arrive at the opinion that the trades of the client were suspicious and therefore he did not report the transactions to FIU.
 - d. It may further be appreciated that the impugned transactions pertain to period 2010-11. At the relevant time the whole regulatory system regarding Prevention of Anti Money Laundering was in the nascent stage wherein we as intermediaries were also trying to put in place a proper system pursuant to and in compliance with the Circulars issued by SEBI. Over a period of time, with the benefit of experience, the systems put in place by us have evolved and have undergone changes, so as to effectively address the concerns raised in the SEBI Circulars, with regard to identifying and reporting suspicious transactions to Financial Intelligence Unit.
 - e. Additionally, following aspects be also be kept in mind, while considering our submissions:
 - i. That the clients had an impeccable introducer viz. Axis Bank.
 - ii. That there was nothing unusual in the trading of the said clients. They were trading only in F 8s O Segment. They were religiously meeting the margin requirements and there was no default on this count. At all points of time the funds were provided by the clients through proper banking channels (i.e. Axis Bank). At the relevant time even the Axis Bank, who was the introducer of the clients and was maintaining both the bank and demat account of the clients, did not raise any issue or suspicion with us, with regard to the funds in the bank account of the clients.
 - iii. That admittedly, there is no allegation in the Show Cause Notice that the trades executed by the clients through us, were fraudulent or manipulative in any manner.
 - iv. That there is no allegation in the Show Cause Notice, of our acting in concert with the said clients or aiding or abetting them in any manner.
 - v. That at the relevant time the Principal Officer had filed STR's in 10 cases. The Principal Officer had nothing to gain by not filing the STR, with regard to the clients, if the transactions were suspicious.
 - vi. That going forward, although it would be easier for the PO to report all alerts to the FIU as an abundant precaution to avoid any regulatory queries, this would defeat the very purpose and intent of the Statute (PMLA, 2002) and the Rules framed there under, contemplating suspicious transaction reporting.
 - f. During the course of hearing we were directed to submit clarification on the "reinvestment" of Mr Imtiyaz. In this regard, we submit that during the period of his transactions through us, Mr Imtiyaz was taking pay-outs on many days. When we stated that on several occasions he was seen reinvesting, we meant that he was bringing back a lot of the money he had taken out as payout and hence these amounts could not be considered as fresh investments or fresh money coming into the system. For instance, while he initially brought in around Rs 53 lakhs (48.74 lakhs on 30th Nov 2009 + 5.48 lakhs on 1st Dec), from 1st Dec to 5th Dec he took out around Rs 51 lakhs as pay-out and then brought in Rs 76 lakhs on 8th Dec. From 10th Dec to 12th Dec he then took out Rs 85.69 lakhs and brought in Rs 98 lakhs on 15th Dec. After this he took out Rs 97 lakhs on 17th Dec and brought in Rs 90 lakhs on 18th Dec. Like this Mr Imtiyaz had taken

pay-out on several occasions. Based on the aforesaid, we have inter alia stated that in several instances Mr. Imtiyaz was reinvesting the funds taken out and not making fresh investments. As sated hereinbefore, this was also one of the reasons that we continued to keep Mr Imtiyaz on the watchlist.

CONSIDERATION OF ISSUES AND FINDINGS:-

10. Charges levelled against Geojit as per SCN, submissions of Geojit in reply to SCN, and the documents available on record have been perused. The issues that arise for consideration are :
 - a) Whether, Geojit had violated the respective provisions/Circulars as alleged in the SCN?
 - b) If yes, does the violation, on the part of the Geojit attract monetary penalty under section 15HB of SEBI Act?
 - c) If yes, what quantum of monetary penalty should be imposed on Geojit taking into consideration the factors mentioned in Section 15J of the SEBI Act?

11. The Prevention of Money Laundering Act, 2002 ('PMLA') forms the core of the legal framework put in place by India to combat money laundering. PMLA and the Rules notified there under came into force with effect from July 1, 2005. As per the provisions of the PMLA, it is obligatory for all Intermediaries registered under Section 12 of SEBI Act to adhere to client account opening procedures and maintain records of such transactions as prescribed by the PMLA and Rules notified there under. SEBI has issued necessary directives vide circulars, from time to time, covering issues related to Know Your Client ('KYC') norms, Anti-Money Laundering ('AML'), Client Due Diligence and Combating Financing of Terrorism, for compliance. The Directives also set out the steps that a registered intermediary or its representatives shall implement to discourage and to identify any money laundering or terrorist financing activities.

12. The allegation against Geojit is that the noticee has not filed STR with the FIU in time and a delay has been allegedly noticed. Also, the noticee has failed to exercise proper due-diligence while dealing with the client.

13. The PMLA policy is in place at the noticee as per the provisions of the circulars issued by SEBI in the subject matter, and that, this is not under dispute. The Board of Directors of Geojit approved the Anti Money Laundering Policies and Guidelines in its Board meeting held on October 28, 2006 and Shri Binoy Varghese has been designated as the Principal Officer.

14. The Anti Money Laundering Policies and Procedures w.r.t Monitoring and reporting of suspicious transaction, are as follows:
 - i) *Any transaction, suspicious in nature and within the ambit of the transactions, narrated below should be immediately notified to the principal officer. It shall form part of the Suspicious Transaction Report (STR) to be submitted to the FIU.*
 - ii) –

iii) Unusually large volumes or increase in business in contradiction with the declared networth and annual income of the customer.

15. It is thus to examine whether as per the PMLA policy, the norms been followed for notifying the FIU about the suspicious transactions.
16. The noticee was not a direct solicited client and was referred from a banking channel where the client was already a customer. Further, the client was registered with the noticee in May 2009 and started trading through Geojit from November 2009.
17. Mr. Saiyed traded only in Future & options through Geojit for the Financial Years ('FY') 2009-2010 and 2010-2011. Further, as per the KYC, the income of Mr. Saiyed was between Rs. 1 lac and Rs. 5 lac and his networth was above Rs. 50 lakhs.
18. The details of trading of Mr. Saiyed, the client, carried out through the noticee during the FY 2009-10 and 2010-11 are as follows:

Year	Turnover (Rs. crore)		Total Turnover (Rs. crore)	Total Turnover as % to total turnover of Geojit	Delivery Based Turnover (Rs. crore)	Intraday Turnover (Rs. crore)
	Cash	F & O				
2009-10	0	1,158.95	1,158.95	1.28	NIL	470.16
2010-11	0	416.24	416.24	0.33	NIL	68.98

19. From the above, it is alleged that the turnover figure of Mr. Saiyed, was disproportionate to his income mentioned in the KYC form and that this should have led to the filing of the STR with the FIU.
20. During the period November 2009 to March 2010, Geojit generated 16 alerts in respect of the transaction of Mr. Saiyed. Given the above, Mr. Saiyed was placed on their AML watch list and it is alleged that the Principal Officer of Geojit did not find the transactions of Mr. Saiyed as suspicious for the four months and thus delayed the intimation.
21. As per the submissions of the Noticee, during the period, Mr. Saiyed brought in some large amounts of funds on certain days (Example Rs. 76 lacs on 08/12/2009 and Rs. 98 lacs on 15/12/2009), which were not fresh investment but a greater part of funds had been taken out and was reinvested. Geojit, reached out to Mr. Saiyed to update his KYC details but did not receive any response from Mr. Saiyed.
22. It is pertinent to mention that in terms of SEBI circulars on AML issued to all the intermediaries, that *“the STR should be submitted within 7 days of arriving at a conclusion that any transaction, whether cash or non-cash, or a series of transaction integrally connected are of suspicious nature. The Principal Officer*

should record his reasons for treating any transaction or a series of transactions as suspicious. It should be ensured that there is no undue delay in arriving at such a conclusion.”

- 23.** In order to arrive at a conclusion about the delay as alleged, it would be worthwhile to appreciate the circumstances and also to how the clients' trading attracted the attention of authorities at other broker and also at the exchange prompting it to do a limited purpose inspection.
- 24.** It is on records that Saiyed also traded through other broker in the capacity of sub-broker/client and there too he was a bank referred client. Further, the trading details of Mr. Saiyed were incommensurate with his income details declared in KYC. Hence, Mr. Saiyed was informed on February 12, 2009 and April 17, 2009 by the other broker to update his income details. However, Mr. Saiyed, failed to provide documents to justify his trading volume.
- 25.** It is also on record, that during the period April 15, 2009 to August 05, 2009, 11 alerts were generated by the other broker due to high value trades in option contracts. As per the statement of the broker on records, due to certain inputs received, field visit was carried out by the broker in October 2009, wherein it was observed that Mr. Saiyed has indulged in unlawful activity of raising funds from the investors by promising assured returns under the name and stamp of sub-broker of the other broker. Since, the transactions of Mr. Saiyed were observed to be suspicious in nature, the broker filed STR with FIU on October 28, 2009, after nine months of the first alert generated and all business with Mr. Saiyed was closed.
- 26.** Meanwhile, in June 2010, NSE conducted a limited purpose inspection of the Noticee for the trading activities of the client Mr. Saiyed. Thereafter, NSE communicated the findings of inspection to Geojit and instructed Geojit to sever the trading relationship with Mr. Saiyed with immediate effect. As per the instruction from NSE, Geojit suspended the client Mr. Saiyed from trading with effect from July 19, 2010 and filed STR with FIU on June 17, 2010.
- 27.** It is observed that Mr. Saiyed traded through Geojit for the period November 2009 to April 2010. During the period, Geojit had observed that the trades of Mr. Saiyed were incommensurate with the income and networth details given in his KYC form and hence, Geojit put Mr. Saiyed on watchlist.
- 28.** Noticee submitted that, the Principal Officer based on his assessment of the transactions was of the opinion that the transactions of the client do not qualify as suspicious transactions and the trades of the client were kept under observation/watch list due to the following reasons:
 - a. The networth of the client was in the highest available slab of above Rs 50 lakhs.
 - b. The client was aged 55 years and giving out an impression of years of business activity and was proprietor of Waft Investments

- c. There was no delivery based business trading. Exposure availed was on the basis of strict margins
- d. Large funds brought in on some days were a reinvestment of what was earlier taken out by him

29. In the meantime, Geojit informed Mr. Saiyed to update his KYC for income details however, no response was received from him. Meanwhile NSE conducted inspection and directed Geojit to stop trading on behalf of Mr. Saiyed. Based on the direction of NSE, the principal officer formed the opinion that the transaction executed by the client qualify as suspicious transactions and accordingly filed the STR with FIU and suspended the account of the client in July 2010.

30. While it has been an argument of the Noticee on the one hand that the client was within the highest available slab of networth and transactions were consequently not suspicious, however on the other hand the Noticee has submitted that the client was requested to update the KYC based on alerts generated. This appears to be an afterthought. Irrespective of the above, it can be observed that the noticee should have taken efforts for updation of KYC on immediate basis and subsequent reporting to FIU.

31. Thus, the Noticee fails to comply with the provisions of SEBI Circular SD/AML/CIR-1/2008 dated December 19, 2008 and SEBI circular ISD/AML/CIR-1/2009 dated September 01, 2009 read with SEBI Master Circular CIR/ISD/AML/3/2010 dated December 31, 2010. Accordingly, Geojit being intermediary has failed to comply with the Code of Conduct of the Stock Broker by not exercising high standards of integrity and due skill care and diligence in his conduct of business and thus violated Clause A(1) and A(2) of Code of Conduct for Stock Broker of Schedule II of Stock Broker Regulations.

32. With respect to Ms. Riyazunnisa, wife of Mr. Saiyed, the client had opened trading account with Geojit, on December 31, 2009 and her income was in the range of Rs. 5 lac to Rs. 10 lac. As per the submission of the Noticee, the trading details of Ms. Riyazunnisa was in line with her disclosed annual income. Further the investigations have not brought out any material to show that the trading was disproportionate to the income of the said client.

33. Given the above, due to want of evidence, no adverse findings are recorded against the noticee with respect to the client Ms. Riyazunnisa and the charges mentioned in the SCN against noticee in respect of filing STR of Ms. Riyazunnisa with FIU are disposed off.

Issue b) If yes, does the violation, on the part of the Geojit attract monetary penalty under section 15HB of SEBI Act?

34. In view of the above conclusion drawn, it now remains to be determined whether the violation attracts the monetary penalty under Section 15HB of the SEBI Act. In this regard, the respective provisions are quoted below:

SEBI Act

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

- 35.** Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence,once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary.*
- 36.** Based on the above, it is determined that it is a fit case for imposing of monetary penalty on Geojit.

Issue c) If yes, what quantum of monetary penalty should be imposed on the Geojit taking into consideration the factors mentioned in Section 15J of the SEBI Act?

- 37.** While determining the quantum of penalty under section 15HB of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

"Factors to be taken into account by the adjudicating officer

15J of SEBI Act. *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default."*

- 38.** It is on record that the principal officer during the relevant time had filed STR in 10 cases. The noticee has mentioned that the client had not defaulted in meeting his trade obligations and margin requirements. Further, there was no allegation in the investigation that the trades executed by the clients through the Noticee were fraudulent or manipulative in any manner. Also during the relevant time there was no investor complaints in respect of Mr. Saiyed and the alleged violation have caused any loss to any investor or the securities market in any manner.
- 39.** All the above factors have been taken into account while imposing a reasonable penalty on the Noticee.

ORDER

40. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, in exercise of the powers conferred under Section 15-I(2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, it is concluded that the proceedings against Geojit stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, a monetary penalty of **Rs. 2,00,000/- (Two lakh Rupees only)** is imposed upon Geojit Financial Services Ltd, Stock Broker under Section 15HB of SEBI Act, 1992.

41. Geojit Financial Services Ltd shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

42. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - IV [EFD1-DRA-IV], SEBI Bhavan, Plot No.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

1. Case Name:
2. Name of Payee:
3. Date of payment:
4. Amount Paid:
5. Transaction No:
6. Bank Details in which payment is made:
7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

43. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to Geojit Financial Services Ltd and also to SEBI.

Date: May 30, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer