

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM : PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

**Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992
against Fairwealth Securities Limited in the matter of Alka Securities Limited**

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") observed a spurt in the price and volumes in the shares of Alka Securities Limited (hereinafter referred to as "ASL") during the period - November 2008 to March 2009 in the Bombay Stock Exchange Limited (hereinafter referred to as "BSE"). There were several surveillance alerts with respect to large volumes of off-market transfer of shares of ASL. Therefore, SEBI conducted an examination into the dealings in the shares of ASL during the aforesaid period to ascertain whether the spurt in volumes and price was normal or whether the same was the result of any unfair trade practice adopted by the *promoters* of ASL in concert with certain other entities. It was noticed in the said examination that the *promoters* of ASL were found to be involved in off-market transfers of shares, which were subsequently traded on the BSE.

2. SEBI, while *prima facie* finding that there were fraudulent and unfair trade practices in dealing in the scrip, had also identified 9 *promoter entities*, 42 *first level entities* including the noticee, and 317 *second level entities*, who were allegedly involved in the manipulation. Based on the findings of the preliminary investigation, SEBI vide an *ad interim ex-parte* Order dated July 28, 2009 (hereinafter referred to as the "*Interim Order*") issued various directions against ASL, the *promoter entities*, *first level* and *second level entities*. All the *first level entities* and the *second level entities* were directed not to buy, sell or deal in the securities of ASL in any manner, till further directions in that regard. Subsequently, the *Interim Order* was confirmed against the *first level entities* and the *second level entities* vide an Order dated October 30, 2009 (hereinafter referred to as the "*Confirmatory Order*").

3. Thereafter, SEBI conducted a formal investigation into the dealing in the shares of ASL for the period - September 01, 2008 to July 31, 2009 (hereinafter referred to as the "investigation period"). The investigation was completed on March 31, 2010. During the investigation, when the trading pattern was examined, it was observed that five of the *promoters* of ASL, namely, Ms. Alka M. Pandey, Mr. Mahesh Natvarlal Kothari, Mr. Mahendra Pandey, Ms. Dimple Kothari

and Mahesh Kothari Shares and Stock Brokers Limited ("MKSSB") had transferred shares of ASL in off-market transactions to a group of 42 entities (identified as the *first level entities*) who in turn transferred the shares in off-market transactions to another set of 317 entities (identified as the *second level entities*) and *additional entities* [*a total of 69 entities - which included 52 entities who received shares of ASL in off-market from Ashwini Trading Limited (a first level entity) and remaining 17 entities who had purchased shares from Dena Bank as nominees of the promoters of ASL and who had dealt in the shares of ASL in the market*]. Subsequently, the *first level entities* were found to have received substantial quantity of shares back from the *second level* and *additional entities* through transactions in the securities market, out of which a portion of those shares were found to have been transferred to the *five promoters*. It was observed that the shares which were transferred in off-market by the *promoters* were utilised in the manipulation of the shares of ASL on the stock exchange. The investigation also observed transactions of large volume of shares of ASL, which were carried out by the *first level entities* both in off-market as well as on the stock exchange trading platform.

4. Fairwealth Securities Limited (hereinafter referred to as "the noticee") was *prima facie* identified as one of the *first level entities*. In the investigation, it was noticed that the noticee received shares from MKSSB (a *promoter* of ASL) in an off-market transaction and was also found to have transferred shares in off-market to a promoter (*Mr. Mahendra Pandey*) and two second level entities, namely, *Aidos Trade Limited* and *Mr. P.A. Chorge*. The noticee was also found to have executed transactions on the market in the shares of ASL. In view of the above, the dealings of the noticee in the shares of ASL during the relevant period was *prima facie* alleged to be in contravention of the provisions of regulations 3, 4(1) and 4(2)(a), (b) & (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "the PFUTP Regulations").

5. SEBI, therefore, issued a Show Cause Notice dated October 28, 2010 (hereinafter referred to as "the SCN") to the noticee, advising it to show cause as to why suitable directions under sections 11 and 11B of the SEBI Act, 1992 should not be issued against it, which may include restraining it from accessing the securities market and prohibiting it from buying, selling or otherwise dealing in securities, for an appropriate period of time and/or issue such other directions as deemed fit and proper. The noticee filed its initial response to the SCN vide letter dated November 11, 2010 and requested for an opportunity of personal hearing in the matter. Thereafter, it sought an adjournment of the personal hearing scheduled on July 15, 2011 and informed its intention of filing an additional reply. Thereafter, the noticee filed a detailed

response to the SCN vide letter received by SEBI on July 26, 2011, wherein it *inter alia* submitted as follows :

- (i) The noticee is a stock broker of NSE and BSE.
- (ii) It does not hold any shares of ASL. It neither received any shares from the promoters of ASL in its demat account nor traded in the stock market in the shares of ASL in its proprietary account during the investigation period.
- (iii) All the alleged transactions in the shares of ASL were carried out by it during the period November 2008 to March 2009 for its three clients, namely, Aidos Trade Limited, Mr. Mahendra Pandey and Mr. P.A. Chorge ("the noticee's clients"), as per the details below :

Sr.No.	Name of the client	Dates on which purchases made	Dates on which sales made
1	Aidos Trade Limited	07/11/2008 12/11/2008 17/11/2008	Nil
2	Mr. Mahendra Pandey	06/01/2009 07/01/2009 12/01/2009 15/01/2009 04/02/2009 09/02/2009	30/1/2009 2/02/2009 13/02/2009 13/03/2009 19/03/2009
3	Mr. P.A.Chorge	13/01/2009 19/01/2009 09/02/2009	18/02/2009 20/03/2009

- (iv) The allegation that it had carried out dealing on 207 trading days out of 221 days is factually incorrect as its clients had traded for less than 7 days individually and collectively for not more than 12 days to 15 days out of the 221 trade days.
- (v) The statement that it had bought 60,000 shares and sold 4,73,700 shares in off-market (*as mentioned in para 7.3.9 on page 14 and 15 of the SCN*) is incorrect. The said buy and sell are not off market transactions, but market transactions which were delivered through stock exchange (NSE) for buy and sell during the period - November 2008 to March 2009. The shares were withheld for the purchases made and shares which were subsequently sold were also withheld on account of debit balances on relevant dates in the account of its three clients. Since exchange deliveries cannot be retained in the pool account for more than 24 hours, it is a market practice that the shares of clients are transferred to margin account pertaining to clients and when the ledger account was settled, the shares were transferred from the noticee's margin demat account to the demat accounts of the respective clients. Therefore, although it appears to be off market transfers, these were shares received as deliveries from the stock exchange. This fact can be verified from exchange also by SEBI.
- (vi) Annexure C (*to its reply*) contains a table along with remarks for clients' transactions in the scrip of ASL (buy/sell) and the details of the deliveries/obligations received /given from the noticee's pool account to noticee's margin demat account and further transfer to the respective clients showing the *bonafide* reasons for holding the ASL shares on account of

non receipt of timely payment from the clients. The same is reflected in the ledger of the clients.

- (vii) On perusal of Annexure C, it can be seen that there are no off-market transactions as alleged, as the shares that are purchased or sold by the said clients are withheld on behalf of respective clients for non-receipt of timely payments and the shares received in pool account are transferred to margin account on behalf of the clients and released from the margin account to the respective clients' demat account after the payments are cleared by the clients. Hence, the said allegation of off-market transactions in respect of market deliveries to the clients is incorrect and ought to be dropped against it.
- (viii) The noticee's clients traded in the normal course of business and it had placed the orders under instructions from the said clients. All the transactions were market trades and its clients made the sales and purchases by making payments (*either partly or fully*) or giving delivery of shares (*retained in pool account/Client margin beneficiary account*) that were sold in the market on different dates and receiving the payment or adjustments, if any against the debit balance in the ledger in the 3 clients' accounts.
- (ix) The noticee is not connected to the *promoters* of ASL in any way. It was not aware that Mr. Mahendra Pandey was one of the *promoters* of ASL. The fact that Mr. Mahendra Pandey is a *promoter* of ASL came to its knowledge only from the *Interim Order* and the SCN. The said client was registered (*as its client*) on December 18, 2008 by completing the client registration formalities and was carrying on delivery based dealings in the securities market during the period - January 2009 to March 2009.
- (x) There was no monetary gain to the noticee on account of such alleged fraudulent scheme purportedly carried out by the *promoters* as the *promoters* were not directly known to the noticee save and except one Mr. Mahendra Pandey who was registered as its client. The said client (Mr. Mahendra Pandey) and the other clients had carried out the delivery based dealings in the market during the period November 2008 to March 2009 and not thereafter. Therefore, it is wrong to link the noticee with the alleged manipulation and with the alleged scheme based on presumption and surmises and is contrary to the material facts on record. Since the transactions were executed for its clients, the observation that "*the collusion and the prior understanding between the entities is reconfirmed by their trading in the market which shows that the entities which received the shares in the off market also participated on market in a specific pattern whereby the 1st level entities are buying back from 2nd level and additional entities and passing it on to the promoters*", is incorrect.
- (xi) As a trading member, it had not undertaken any type of transactions which can be categorized as synchronised in nature. Its dealings were independent in nature and which conformed to the rules and regulations. The noticee had executed genuine trades at the price prevailing in the market at the time of execution and that no act of it can be termed as fraudulent and unfair trade practice in any manner. All the trades executed by it during the period under review was on behalf of its constituents and not in its

proprietary account. It has only a 'member-constituent' relationship with its clients. It did not know who the counterparties were at the time of placing the orders for its client. Therefore, no malicious intent could be attributed for such trading.

- (xii) Its clients were trading on the basis of their individual decision and that their matching, if any, is co-incidental and beyond its knowledge. There is always a *mens rea* behind every bad intention and in the trading observed by SEBI, no bad intention on the noticee's part is established.
- (xiii) The alleged observation about spurt in share price of ASL during the month of September 2008, has no bearing on the noticee as the transactions of its three clients were executed during the period - November 2008 to March 2009 and were on limited days. Therefore, the noticee is not involved in the alleged price manipulation as referred to in *paragraph 2* of the SCN.
- (xiv) As regards the off-market transfer of shares, the noticee submitted that there were no off-market transfer of shares of ASL to its proprietary account during the period of investigation or thereafter from the *promoters*. The 10,000 shares of ASL received by it on November 08, 2008 from MKSSB was towards margin for its client, Aidos Trade Limited. MKSSB, vide a letter dated November 10, 2008, intimated *inter alia* that "*we would like to inform you that Aidos Trade Ltd is our client (client code no. A005) and Aidos Trade Ltd having 10000 shares of Entegra and 10000 shares of Alka Securities Ltd in our Pool Account and we are transferring these shares on behalf of AIDOS Trade Ltd.*" The said 10,000 shares of ASL were also shown in *Annexure 6* of the SCN as allegedly transferred by the *promoters*. The same is incorrect as the aforesaid letter of MKSSB clearly stated that the same belonged to its client, Aidos Trade Limited and not of the *promoters*. The noticee had treated the said 10,000 shares of ASL received from Aidos Trade Limited, as margin in a *bonafide* manner. Therefore, to treat the said 10,000 shares received as margin, as off-market transfer, is grossly incorrect.
- (xv) Normally, all shares initially given as margin are transferred through off-market route only to the stock broker/trading member and there is no other manner to transfer shares when they are held in dematerialised mode. Further, the 10,000 shares received as margin was accounted to the client, Aidos Trade Limited. Therefore, the noticee cannot be made part of the off-market transactions of *promoters* and linked with the *promoters* merely because its clients had carried out their own delivery based transactions in the market during the relevant period. Hence, the observation in the SCN that "*off market transfers particularly in a situation when the shares are freely available from the market can only be under special consideration between two parties and cannot be seen as arm's length trades*" is *per se* wrongly applied to the noticee and ought to be dropped against the noticee in view of the above facts.
- (xvi) The day wise transaction details indicated in *Annexure 5* of the SCN are *per se* not applicable to it, but applicable to its three clients, who carried out transactions on

relevant dates mentioned in the table above. Therefore, the graph analysis of market movement of the scrip shown in paragraph 7.1.11 of the SCN is not at all applicable to the noticee as no transactions were carried out by it in its own proprietary account during the period of investigation as alleged.

- (xvii) There is no reference to the noticee in any of the tables mentioned in paragraphs 7.3.6 to 7.3.8 on pages 12 to 14 of the SCN (*which dealt with the off-market and on-market transactions inter-se done by noticees with first level entities*).
- (xviii) The *Interim Order*, which directed the noticee not to buy and sell or deal in securities of ASL in any manner till further directions have been strictly adhered by it. Since it never carried out trades in the scrip of ASL in its proprietary account during the period of investigation, it was of the view that SEBI would have taken into account this fact during investigations and therefore had not filed any reply to the *Interim Order*. It was under a *bonafide* presumption that SEBI would be sending a show cause notice in respect of said alleged investigation in the scrip ASL. The noticee was not aware of a *Confirmatory Order* passed on October 30, 2009 or otherwise it would have availed the opportunity of filing its written objection to the averments in the *Interim Order*.
- (xix) The noticee denied the allegation that it had jointly and deliberately perpetrated a scheme to spread out/layer the shares of ASL at various levels, that have been identified as *first level entities*. Since the noticee's clients had traded in the shares, it has been wrongly presumed that it had traded. Therefore, it appears that the alleged indication of it being one of the *first level entities*, is on a wrong interpretation of the facts.
- (xx) There is no relation whatsoever, between the noticee and the other entities - either *first level, second level or additional entities* as indicated in *paragraph 7* of the SCN. Further, the noticee has not received any shares of ASL in off-market from Ashwin Trading Limited (*a first level entity*). Hence the said reference to Ashwin Trading Limited or any other entities has no connection whatsoever directly or indirectly with the noticee.
- (xxi) There was also no off market transfers to the *second level entities or additional entities* nor did the noticee receive substantial quantities of shares back from *second level and additional entities* through the market. It did not transfer some of them to the 5 *promoters* of ASL to complete the cycle, as alleged. Therefore, the alleged observation regarding the transfer of shares through off market and market transactions and completing the cycle was denied by the noticee. The noticee has also denied being instrumental in manipulating the price and volume mechanism in the scrip of ASL nor had it been part of any cycle of activity as alleged.
- (xxii) There is no reference to the noticee in the market transactions or off-market transfers specifically mentioned in *paragraphs 7.1.3 and 7.1.4* of the SCN (*which contains two tables indicating the gross figures of off market transfers by the respective entities and the gross figures showing month wise off market transfers*). Further, there are no off market transfers to the noticee as alleged in paragraph 7.1.6.

- (xxiii) With reference to *paragraphs* 8 and 9 (on pages 15 & 16 of the SCN), the noticee submitted that conclusion arrived therein are distorted. Since the noticee has traded for its clients and executed delivery based transactions, the allegations and presumption about the conduct of the noticee incorrect.
- (xxiv) The noticee denied violating the provisions of the PFUTP Regulations, as alleged against it. The noticee was not part of any scheme or manipulation as alleged in the show cause notice nor is it connected with the promoters or any nexus has been shown or proved with the *promoters or any other entities* on account of transactions in the scrip of ASL carried out by the noticee in its own proprietary account during the period of investigation. It therefore requested that taking into consideration its submissions and the facts and documents, the SCN should be withdrawn. It also relied on the observations in the judgements/orders of Hon'ble Courts and the Hon'ble Securities Appellate Tribunal in that regard.

6. In view of its submissions, the noticee requested that the charges levelled against it be dropped and that its name be expunged from the list of '*first level entities*'. Further, the noticee had stated that it desired to avail the consent process as per the SEBI guidelines and that an application for passing of a consent order in the matter would be filed separately. SEBI also issued a corrigendum to the SCN, vide notice dated August 05, 2011, wherein the table in page 13 of the SCN (*regarding inter se transaction by noticees with 1st level entities in market*) was substituted with a table mentioned in the said corrigendum. The noticee responded to the corrigendum notice vide its letter dated August 16, 2011 and *inter alia* submitted that the table on page 13 of the SCN is part of paragraph 7.3.6 of SCN and that the details do not *per se* apply to it and reiterated its reply given with respect to the same.

7. An opportunity of personal hearing was granted to the noticee on October 14, 2011. In the said hearing, the noticee appeared and made submissions. In the meantime, the noticee filed an application for settlement of the instant proceeding through a consent order. The application filed by the noticee was dealt with in accordance with the SEBI Circular dated April 20, 2007. Subsequently, this proceeding was revived after the said application was rejected by SEBI.

8. I have considered the SCN, the annexures enclosed with the SCN, the corrigendum issued to the SCN, the replies/submissions made by the noticee, the documents submitted by the noticee along with its detailed reply and other material available on record. The SCN has alleged that the noticee has contravened the provisions of regulations 3, 4(1) and 4(2)(a), (b) & (g) of the PFUTP Regulations, while dealing in the shares of ASL during the investigation

period. While considering the charges levelled against the noticee, I have perused the annexures enclosed with the SCN and note the following :

- (a) **Annexure 1** : Contained the names of 9 promoters of ASL, 42 *first level entities* (including the noticee, who was mentioned at sr. no. 2 in the list of first level entities), 317 *second level entities* and 69 *additional entities* along with their Permanent Account Numbers (PANs).

- (b) **Annexures 2 (A to D)** :

Annexure 2A - Contains the details of off-market transfer of shares from the *promoters* to the *first level entities*. As regards the noticee, I note that on November 08, 2008, MKSSB, a promoter of ASL had transferred 10,000 shares to the noticee. No other entry is found with respect to the noticee in the said document.

Annexure 2B - Contains the details of off-market transfer of shares from the *first level entities* to the *second level entities*. As regards the noticee, I note that on November 19, 2008, November 20, 2008 and November 24, 2008, the noticee had transferred 1,000 shares, 99,000 shares and 1,33,000 shares, respectively, to Aidos Trade Limited (a *second level entity*).

Annexure 2C - Contains details of off-market transfer of shares by certain *second level entities* to *first level entities*. The said document did not contain any details that pertained to the noticee, which indicates that the noticee did not receive any shares from the second level entities.

Annexure 2D - contains details of off-market transfer of shares from the *first level entities* to the *promoter entities*. As per this document, the noticee had transferred 1,40,700 shares to Mr. Mahendra Pandey (a *promoter of ASL*) on March 24, 2009.

- (c) **Annexure 3 (A to D)** :

Annexure 3A - contains transactions that took place on the stock exchange, where shares were transferred by *first level entities* to the *promoters of ASL*.

- (i) As regards the noticee, I note that Mr. Mahendra Pandey had traded (*sell*) through the noticee and JMDE Packaging and Realities Limited had purchased shares of ASL through SSJ Finance and Securities Limited. Trades were executed on January 30, 2009, February 02, 2009, February 13, 2009, March 13, 2009 and March 19, 2009 and a total of 93,135 shares were traded between the said parties.

- (ii) There were other trades also mentioned in the said annexure viz., that of Takeshi Marketing Private Limited trading through the stock broker Anand Rathi Financial Services Limited, Sandeep S Ghogare traded through MKSSB and Ashwini Trading Private Limited traded through Transparent Shares & Securities Limited.

Annexure 3B - contains details of market trades between *second level entities* and *first level entities*.

- (i) On November 07, 2008 and November 12, 2008, the noticee (*as a stock broker*) traded on behalf of Aidos Trade Limited (*a first level entity*) for 1,32,700 shares and the counterparty was Alpha Graphic India Limited (*represented by Mr. Anand Shyamsunder Jaisingh*), *a second level entity*, trading through MKSSB.
- (ii) Further, on January 19, 2009, the noticee (*as a stock broker*) traded on behalf of Mr. P.A. Chorge for 10,000 shares and the counterparty was Alpha Graphic India Limited trading through MKSSB.

Annexure 3C - contains details of market trades between *first level* and *second level entities*.

- (i) On February 18, 2009, SSJ Finance and Securities Limited trading for JMDE Packaging and Realities Limited (*buy*) had traded for 16,000 shares for which the counterparty (*sell*) was the noticee (*as a stock broker*) trading for its client, Mr. P.A. Chorge.
- (ii) On March 20, 2009, MKSSB traded (*buy*) for Mr. Sandeep Ghogare for 100 shares and the counterparty (*sell*) was the noticee trading for Mr. P.A. Chorge.

Annexure 3D - contains details of the trades between promoters and *first level entities*.

- (i) For the trades that happened on January 06 & 07, 2009, the noticee (*as a stock broker*) traded on behalf of Mr. Mahendra Pandey (*a promoter*) for 1,00,000 shares and the counterparty was Aidos Trade Limited (*Mr. Virendra S. Pandey is its authorized representative*).
- (ii) For the trades on January 12 & 15, 2009 and February 04 & 09, 2009, the noticee (*as a stock broker*) traded on behalf of Mr. Mahendra Pandey for 88,500 shares and the counterparty was Aster Mercantile Private Limited (*Mr. Sandeep Ghogare is its authorized representative*).

(d) **Annexure 4 (A and B) :**

Annexure 4A - Details of off-market transactions amongst the *first level entities*. This document does not contain the name of the noticee, which indicates that the noticee did not have any off-market transactions with the other *first level entities*.

Annexure 4B - Details of market transactions amongst the *first level entities*. This document also did not mention the name of the noticee. The same indicates that the noticee did not have any market transactions with the other *first level entities*.

(e) **Annexure 5 :** A consolidated date-wise breakup of the total transactions entered by *promoters/first level entities/second level entities and the additional entities* was mentioned in the said document.

(f) **Annexure 6 :** mentioned the quantity of shares received by the *first level entities from the promoters*. The noticee received (*on November 08, 2008*) 10,000 from the *promoter* (MKSSB).

9. From the documents (*contract notes - Annexure A to its detailed reply*)) submitted by the noticee, I note the following :

Name of client	Date of trade	Buy/sell	Quantity
Aidos Trade Limited	November 17, 2008	Buy	90,000
Aidos Trade Limited	November 12, 2008	Buy	70,000
Aidos Trade Limited	November 07, 2008	Buy	63,000
	Total for Aidos Trade Limited		2,23,000
P.A. Chorge	March 20, 2009	Sell	100
P.A. Chorge	February 09, 2009	Buy	15,500
P.A. Chorge	February 18, 2009	Sell	16,000
P.A. Chorge	January 19, 2009	Buy	10,000
P.A. Chorge	January 13, 2009	Buy	17,500
	Total for Mr. P.A. Chorge		26,900 (net)
Mahendra Pandey	March 19, 2009	Sell	100
Mahendra Pandey	March 13, 2009	Sell	700
Mahendra Pandey	February 04, 2009	Buy	31,000
Mahendra Pandey	February 13, 2009	Sell	47,000

Mahendra Pandey	February 02, 2009	Sell	10,000
Mahendra Pandey	January 30, 2009	Sell	50,000
Mahendra Pandey	January 15, 2009	Buy	35,000
Mahendra Pandey	January 12, 2009	Buy	35,000
Mahendra Pandey	January 07, 2009	Buy	50,000
Mahendra Pandey	January 06, 2009	Buy	50,000
	Total for Mr. Mahendra Pandey		93,200 (net)

10. Before proceeding further, I note that the noticee has submitted that since its clients had traded in the shares of ASL, it has been wrongly presumed that it has traded. The allegation that the noticee is a *first level entity* was levelled since it received 10,000 shares from MKSSB and not because its clients had traded in the scrip. According to the SCN, the *promoters* of ASL had transferred shares in off-market to the *first level entities*. In this regard, the SCN (*more particularly Annexure 2A*) mentions that on November 08, 2008, MKSSB (*a promoter of ASL*) transferred 10,000 shares to the noticee in off-market. The noticee has submitted that the said shares were received on behalf of its client, Aidos Trade Limited from MKSSB through off-market transfer, towards margin for the trades of the said client. There are no other off-market receipt of shares from any of the other identified *promoters* to the noticee, except the transaction mentioned above. Though, ideally Aidos Trade Limited should have transferred the same directly to the noticee (*as the clients' stock broker*), such transfer has come from MKSSB (*the said client's another stock broker, MKSSB*).

11. I note from the records that Aidos Trade Limited had traded on three days - November 07, 12 & 17, 2008, purchasing a total of 2,23,000 shares of ASL. As per the details mentioned in Annexure C of the noticee's detailed reply, the shares received (on 11.11.2008, 17.11.2008 & 19.11.2008) from the BSE with respect to such purchases were held in the margin account of the noticee as payment was received after T+2 (settlement cycle). Thereafter, shares (1,000 shares on 19.11.2008, 99,000 shares on 20.11.2008 & 1,33,000 shares on 24.11.2008) were transferred to the said client's beneficiary account. The 2,33,000 shares which were purchased, were transferred to Aidos Trade Limited. The same could include the 10,000 shares (223000+10000=233000) of Aidos Trade Limited which was transferred by MKSSB to the noticee as margin. The same, in my view, could explain the off-market receipt of shares (from MKSSB) and the off-market transfer of shares (*to Aidos Trade Limited*) with respect to the details/transactions as mentioned in Annexures 2 A and B of the SCN.

12. As regards Mr. Mahendra Pandey, I note from the documents submitted by the noticee that all the purchases made on 06.01.2009 (50,000 shares), 07.01.2009 (50,000 shares), 12.01.2009 (35,000 shares), 15.01.2009 (35,000 shares), 04.02.2009 (31,000 shares) and 09.02.2009 (47,500 shares), were retained in the margin account of the noticee. Subsequently, on 24.03.2009, the noticee had transferred 1,40,700 shares to the demat account of Mr. Mahendra Pandey. With respect to the 'sell' transactions of Mr. Mahendra Pandey, I note that :

- (i) on 30.01.2009, 50,000 shares were sold – the same were transferred on 31.01.2009 to the BSE settlement account.
- (ii) on 02.02.2009, 10,000 shares were sold – the same were transferred on 03.02.2009 to the BSE settlement account.
- (iii) on 13.02.2009, 47,000 shares were sold – the same were transferred on 14.02.2009 to the BSE settlement account.
- (iv) on 13.03.2009, 700 shares were sold – the same were transferred to the BSE settlement account on 14.03.2009.
- (v) on 19.03.2009, 100 shares were sold – the same were transferred to the BSE settlement account on 20.03.2009.

13. Similarly, in the case of the other 2 clients, the noticee had purchased 17,500 shares for Mr. P.A. Chorge on 13.01.2009. The said shares, after receipt from the BSE settlement account on 15.01.2009, were withheld in the noticee's margin account as payment was received after T+2. The same was the case for the 10,000 shares purchased on 19.01.2009, which was received from the BSE settlement account on 21.01.2009. The noticee also received 15,500 shares on 11.02.2009 for the market purchases of the said client and the same was withheld in the noticee's margin account. The client sold 16,000 shares, which were transferred on 19.02.2009 to the BSE settlement account. On 20.03.2009, the noticee transferred 26,900 shares from its beneficiary account belonging to all clients to the client beneficiary account of Mr. P.A. Chorge. For the market sell of 100 shares on 20.03.2009, the noticee had on 21.03.2009, transferred such number of shares to the BSE settlement account. In view of the above, I note that the noticee had made transfer of shares to its client with respect to the market purchases made by the client on various dates as mentioned above. The noticee had also enclosed copy of the transaction statement of its demat account (*Client ID:10529894*), to show the transfer of shares (received from settlement) from the said demat account to the '*beneficiary account of all clients*'.

14. I have examined the SCN along with its annexures, the replies and documents submitted by the noticee in this proceeding, as explained above. After having examined the same, I find that all the market transactions of the noticee were executed by it as a stock broker for its clients - Aidos Trade Limited, Mr. Mahendra Pandey and Mr. P.A. Chorge. Mr. Mahendra Pandey is identified as a *promoter entity* and, Mr. P.A. Chorge and Aidos Trade Limited are identified as *second level entities* in the matter. When the fact of off-market transfer of 10,000 shares to the noticee is seen against the allegation (*that the promoters of ASL transferred shares in off-market to the first level entities, who in turn transferred shares to the second level and such shares were utilised for manipulating the volumes/price of the scrip during the relevant period*), I note that the said off-market transfer from MKSSB has been claimed to be a transfer of shares of Aidos Trade Limited towards 'margin' for trades of Aidos Trade Limited. I have perused the letter from MKSSB to the noticee with respect to the said off-market transfer and the same states "*We would like to inform you that Aidos Trade Ltd. is our client (client code no.A0055) & Aidos Trade Ltd. Having 10,000 shares of Entegra and 10,000 shares of Alka Securities Ltd. in our pool A/C and we are transferring these shares on behalf of AIDOS Trade Ltd.*".

15. Further, the off-market transfer of shares, as mentioned in Annexure 2 B, is found to be the transfer of shares pursuant to the settlement of trade obligations (buy transactions) of the noticee's client, Aidos Trade Limited. Also, shares have been transferred to Mr. Mahendra Pandey towards the 'settlement' of his buy transactions in the stock exchange. I note that as per Annexure 2 C of the SCN, the noticee did not receive any shares from any of the *second level entities*. The details mentioned in Annexures 4 A (*off-market transactions amongst the first level entities*) and 4 B (*market trades amongst the first level entities*) of the SCN, does not contain the name of the noticee. Therefore, it has to be presumed that the noticee did not have any off-market transactions with other *first level entities* or traded its proprietary account or for clients on the stock exchange platform on the dates mentioned in the said annexures. I also note that the SCN in *paragraph 7.3.4.3* contains a table which show the quantity of shares received back by the *first level entities* from the *second level entities*. There is no mention of the noticee in this table, which indicates that it did not receive shares back from the *first level entities*. From the above observations, I find that the SCN and its annexures have not brought out cogent material to substantiate the allegation that the noticee 'being a *first level entity*', had connived with the *promoters* of ASL in the manipulation.

16. I also note that the noticee has denied entering into transactions which did not involve change in ownership of securities as deliveries were given/taken for the transactions done by the

clients. The noticee submits that all the dealings were done by its three clients, viz., Aidos Trade Limited, Mr. Mahendra Pandey and Mr. P.A.Chorge, which are delivery based and all the settlement obligations have been completed by the said clients. Further, the noticee has submitted that it did not trade in its proprietary account during the period of investigation and therefore the charge of “*including in an act which creates false or misleading appearance of trading in the securities market*” cannot be applied to the noticee. I also find from the material available on record that the noticee did not execute any proprietary trades in the shares of ASL during the investigation period. As per records, all market trades were on behalf of its three clients. The off-market receipt of shares has been stated to be for 'margin' for its client, Aidos Trade Limited and the other off-market transactions alleged against the noticee were the transfer of shares to the respective clients after settlement of their on-market transactions (*buy trades*) of the respective clients. I also notice that the SCN brings forward no material to show that the noticee had connections with the *promoters or first or second level entities*, except that of stock broker and client.

17. Therefore, on an examination of the SCN, the material enclosed thereto, the replies of the noticee and the material produced by it before me in this proceeding, as observed above, I am of a considered view that the notice is entitled for a benefit of doubt with respect to the charges levelled against it in the SCN. In view of such opinion, the SCN needs to be disposed off without any directions. Further, the directions issued vide the *Interim Order* and confirmed vide the *Confirmatory Order* needs to be vacated.

18. In view of the foregoing, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11 and 11B thereof, hereby dispose off the show cause notice dated October 28, 2010 issued to Fairwealth Securities Limited in the matter of Alka Securities Limited without any directions. Further, the directions issued against Fairwealth Securities Limited in the matter vide the *ex-parte interim Order* dated July 28, 2009 and confirmed vide Order dated October 30, 2009 are vacated with immediate effect.

**PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

**Date : April 29th, 2013
Place : Mumbai**