

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER REGULATION 29(3) OF THE SEBI (STOCK BROKERS AND SUB-BROKERS) REGULATIONS, 1992 READ WITH THE SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002**IN THE MATTER OF M/S AGBROS SECURITIES PRIVATE LIMITED**

- 1.0 M/s Agbros Securities Private Limited (hereinafter referred to as 'the said broker') is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a broker - SEBI Registration no. INB 031017534 and is a member of the Calcutta Stock Exchange Association of India Limited (hereinafter referred to as 'the CSE').
- 1.1 During inspection of the books of account, records and other documents of the said broker undertaken by SEBI during January 2001 under Regulation 19(1) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as 'the said regulations') following violations were observed :-
- Order Book showing recording of time of placement of order by the client and other particulars was not maintained by the said broker.
 - The receipts/ counterfoils or duplicate of counterfoils of the contract notes issued to the clients was not maintained. Therefore, it could not be verified whether the contract notes were issued/ delivered to the clients within a period of 24 hours of the execution of the orders.
 - The Document Register was not maintained properly and the Margin Deposit Book was not maintained in contravention of Regulation 16 read with Regulation 17(1)(g)& (k) of the said regulations and Rule 15(1)(g) of SC(R) Rules, 1957. It was noticed that the said broker is maintaining only a scrip ledger which does not contain the distinctive number of the scrips which bills have to be referred.
 - The said broker has delayed payment of money to the clients.
 - Client registration forms were not filled properly.
 - Non segregation of clients' money and own funds.
 - Delay in transfer of securities from the pool account to the clients' account
- 2.0 After considering the inspection report and the comments of the said broker thereon, it was decided to conduct an enquiry into the affairs of the said broker, in terms of Regulation 28 of the said regulations. Accordingly, vide order dated April 09, 2002, Shri. S.V. Krishnamohan was appointed as an enquiry officer for holding an enquiry into the contraventions by the said broker of the provisions of the rules, regulations and directives as mentioned in the said order.
- 2.1 The enquiry officer issued a show cause notice dated May 02, 2002 to the said broker under regulation 28 (2) of the said regulations.
- 2.2 After considering the reply of the said broker and submissions made on its behalf during personal hearing before him, the enquiry officer submitted the enquiry report dated July 29, 2002. In the Enquiry Report the enquiry officer has found as under—
- (i) It was replied that the orders were entered on-line and as the client feared that any delay would make him expose to the price fluctuation, the saudas were entered immediately. Due to this, the order book was not maintained in the required form and he has now started the practice of noting the orders in the order book. That there is a likelihood of loss arising out of delay in executing the order is not a good and sufficient reason to do away with the practice of entering the orders in the order book as prescribed by SEBI. Non maintenance of order book in the prescribed manner is in contravention of SEBI Circular SMD(B)/104/22775/93 dated 29th October, 1993 and SEBI Circular SMD/POLICY/IECG/1-97 dated 11th February, 1997.
- (ii) As regards non maintenance of the receipts of the contract notes issued to the clients, the member has admitted that receipts of contract notes issued to the clients are not maintained in some cases as pointed out by the inspecting team. However, it was his case that such discrepancies are limited to outstation clients only. No proof of sending the same is produced. It is, therefore, concluded that the member has not maintained the counterfoils or duplicate of counterfoils issued which is in contravention of Rule 15(2)(b) of SCR Rules, 1957 and Regulations 17(1) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.
- (iii) The reply of the member that due to the duplication of paper work, he did not maintain a separate document register and that the margin statement downloaded from the statement is maintained does not obviate the need to maintain a margin deposit book as per SCR Rules. Document register and margin deposit book are the statutory books that have to be mandatorily maintained as per Rule 15(1)(g) of (Securities Contract Regulations) Rules, 1957, Regulations 16 and 17 1(g) and (k) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.
- (iv) As regards the delay in making payments to the clients, there were 5 instances as pointed out in the show cause notice where the delay in payment ranged between 27 to 216 days. The member has produced authorization letters etc. in support of his contention that the delay in payment was due to the instructions of the client to withhold payments and to release/adjust against future margin money/ pay-in. Letters from all the five clients in this regard were furnished. Since it is for the benefit of the investor that the proceeds need to be paid to him within 2 days, it can be concluded that the investor by giving a letter of authorization to the broker to retain the proceeds towards margin requirements has waived the right to receive the proceeds within 2 days.
- (v) As regards deficiencies in filling up of the client registration form, it was replied that all those client introduction form which were not properly filled up have been now filled up properly. It was submitted that in the case of Ramco Steel, the agreement form was traced and photocopy of the same was shown to the inspecting team. Similarly, pan number

and annual income details of Anu Aggarwal have since been filled up. As regards the Svan Securities, it was replied that he was their client initially and later on became a sub broker. The client agreement was entered before he became their sub broker.

- (vi) Although non maintenance of client agreement forms properly is in contravention of SEBI Circular dated 18th November, 1993 and Circular dated 11th February, 1997, the irregularities relates to 2 clients where the agreement form is not complete in all respects. Since these deficiencies have been rectified and shown to the inspecting team, a lenient view may be taken insofar as this allegation is concerned.
- (vii) As regards non segregation of client's money and own funds, the reply of the member regarding payments of advance tax of Rs.50,000/- and electric charges of Rs.45,575/- from the client's account is not convincing. Similarly, there is no explanation for meeting V-SAT shifting charges of Rs.15,000/- from the client's account. An amount of Rs.4.9 crores were paid to 3 brokers on 15/12/2000 from the client's account as under:

	Name	Amount
1.	Ashok Poddar	39,00,000/-
2.	Dinesh K Singhanian	62,00,000/-
3.	Khemania & Sons	<u>3,89,00,000/-</u>
	Total.....	4,90,00,000

The reply that these payments were made on behalf of clients against pay out in settlement No.136 is also not convincing for the reasons stated below. The member has produced a letter dated 15th June, 2000 from M/s. Svan Securities Pvt Ltd. in support of his contention that the above payments were made to the brokers under the instructions of his client. But the client's letter itself is dated 15th June, 2000 which states that an amount of Rs.5 crores is due as on 15th December, 2000. Therefore, this document is not an evidence that can be relied upon. The client further authorized the member to issue the cheques to the aforesaid brokers. It is not clear as to why the client himself could not make the payments directly to the above brokers and instead adopted the circuitous route of ostensibly authorizing the broker to make such huge payments totaling to 4.9 crores. Further, M/s. Svan Securities Pvt Ltd. who is supposed to be the client to whom Rs.5 crore is due to be paid by the member as on 15/12/2000 is not a client but a sub broker of the member with effect from 16th May, 2000 with SEBI Regn.No.INS030579937/03. On this ground also, it is not correct to contend that the aforesaid amount was due to be paid to Svan Securities Pvt Ltd., a client when in fact it is a sub broker as on that date. It is also not shown by the member as to on what account and for whose benefit this amount of Rs.5 crores was lying in the client's account. The member had stated that these payments were made on behalf of clients against payouts in settlement No.136 and in support of this contention, he has produced, an extract of consolidated Pay in/ Out statement of the exchange for the period 1/12/2000 stating that an amount of Rs.59957070.76 was receivable by the member. This is not authenticated. Extracts of ledger sheets and account details for what transactions in securities this amount is due to Svan Securities with particulars of dates were also not produced. Debiting of clients' account for the transactions which are not client related defeat the very purpose of maintaining clients' account separately. The amounts to the credit of clients' accounts are in the nature of trust and the member is not in order in meeting other expenses which are not client related from such account. The funds in the client's account cannot be applied for any purpose other than what is permissible under SEBI Guidelines. The objective of opening and maintaining a separate account for the client's funds is to segregate and identify them separately and to prevent its misuse so that they are beyond the reach of the broker. The broker has met his office expenditure and gave loans to outsiders from this account, which is highly irregular. This is in violation of SEBI Circular SMD/SED/CIR/93/23321 dated 18th November, 1993. In view of the foregoing, the contention of the member that the aforesaid payments of nearly 5 crores were made on behalf of clients against payout in settlement No.136 is not tenable.

(viii) As regards delay in transfer of securities from the pool account to the client's account beyond the stipulated period, it was submitted that in the five instances, as pointed out in the inspection report and the show cause notice, the delay in transfer was due to the specific written request of the client. Letters from clients i.e. Globe Capital Markets in respect of 2 transactions were enclosed. It is for the benefit of the investors that SEBI vide its Circular dated 07/05/99 has directed the brokers to transfer the securities from their pool account to the beneficiaries account within 15 days. When the investors themselves authorize the broker to retain the securities for future margin requirements/ pay in liabilities, it can be concluded that the investor has given up the right to receive securities within 15 days by giving such authorization letters to the broker. However, in as much as there is no such letter i.e. Dalmia Securities & Abhipra Capital Ltd., there is contravention of SEBI Circular SMDRP/POLICY/CIR/11-99 dated 07/05/1999.

2.3 In view of the facts and findings as recorded in the enquiry report, the enquiry officer in terms of Regulation 28 (7) of the said regulations recommended that the certificate of registration of the said broker be suspended for a period of six months.

3.0 The enquiry report was considered and in terms of Regulation 29(1) of the said regulations, a show cause notice no. SMD/DBA-I/Enq/AM/15106/2002 dated August 08, 2002, was issued to the said broker enclosing therewith a copy of the enquiry report calling upon it to show cause as to why the penalty as recommended by the enquiry officer should not be imposed upon it. It was also advised to reply to the same together with the documents if any, that it may choose to rely upon in support of its reply, within 21 days of the receipt of the same, failing which it would be presumed that it has no explanation to offer. The said broker was also advised to intimate its desire of personal hearing along with its reply.

3.1 The said broker vide its letter dated September 07, 2002 submitted its reply. In its reply the stock broker has generally reiterated its submissions made before the Enquiry Officer. The said broker has made following additional submissions as under:

- It is very difficult to maintain the order book.
- The Enquiry Officer has wrongly concluded that the said broker has not maintained the counterfoils of the contract notes.

- c) Regarding non segregation of client's funds and own funds, it has submitted that the payment was made from the clients account as the due date was approaching and the cheques of business account were not readily available with it. Due to this technical ground the payment was issued from the clients account and the said amount was subsequently transferred to the client's account. It has assured that it will be more careful in future.
- d) Regarding payment made to three parties on 15.12.2000 from the clients account it has submitted that it is general business practice that if a party gives instructions to pay the amount payable by him to some other party, it is generally done looking at the urgency. To avoid delay in the process this practice is adopted. In these cases the amount was payable to its party and they instructed it to pay to these three parties on their behalf.
- e) Regarding delay in transfer of securities from the pool account to the clients account it has submitted that, the Enquiry Officer has committed an error of fact that only the letter of Globe Capital Market is attached and letters of Dalmia Securities and Abhipra Capital are not attached and as such there is irregularity of delay in transfer of these parties. 'In the inspection report under the head 'name of the clients', the names noted are actually the names of the DPs except the Globe Capital Market. Dalmia Securities and Abhipra Capital are DPs and not our clients. We have attached the letters of clients in all the cases pointed out. The copies of these letters are submitted again for your reference. Thus we submit that there is no irregularity noted under this head forming basis of recommendation of penalty.' In support of this it has enclosed the letters dated 12.9.99, 2.10.99, 29.4.99 from Globe Capital Market Ltd. and a letter dated nil from T. C. Prabhu.

3.2 An opportunity of personal hearing was granted to the said broker on 29.10.02. During the hearing the said broker reiterated its submissions. In respect of the allegation of non segregation of own funds and client's funds and payment of Rs.5 Crores to various parties as stated in the letter dated 15.6.2001 from M/s.Svan Securities Pvt. Ltd., before the enquiry officer, it further submitted that the said letter was dated wrongly and reiterated that the payment was made with the consent of said Svan Securities Pvt. Ltd. It submitted that the amount was made to the three entities namely Mr.Ashok Poddar, Mr.Dinesh Singhania and M/s.Khemani & Sons as per the request of the clients. The amount was paid out of client account as M/s.Svan Securities Pvt. Ltd. was to receive Rs.5 crores in December.

3.3 In view of the above new submissions the matter was further verified from Svan Securities Pvt. Ltd. The said Svan Securities Pvt. Ltd. vide their letter dated 22.11.2002 have clarified that the date of the letter was wrongly typed and correct date was 15.12.2000. However, they stated that Rs.39 Lacs was paid to Ashok Poddar who was their client. However, the payment to two other parties viz. M/s.Dinesh Singhania and M/s.Khemani & Sons was made as a temporary accommodation at the request of the said broker. This information was not disclosed by the said broker either before the Enquiry Officer or during the personal hearing before me.

3.4 In view of the above another show cause notice 5.3.2003 was issued to the said broker calling upon it to show cause as to why an enhanced penalty of suspension of the certificate of registration of the said broker for a period of nine months i.e. the penalty more than that recommended by the Enquiry Officer should not be imposed. The said broker was required to submit its reply / explanation within 15 days of the receipt of the notice. By letter dated 19.3.2003 the said broker has submitted that it had no intention to hide any fact and requested for not imposing any penalty in the matter.

4.0 Findings –

4.1 I have taken into account the facts and findings recorded in the enquiry officer's report and submissions of the said broker and the material available on record. My findings are as under –

4.2 Vide SEBI Circular no.SMD/POLICY/IECG/1-97 dated 11.2.97 .As per Clause B (1) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the said Regulations, it is the obligation of a stock broker he faithfully executes the orders for buying and selling of securities for clients at the best available market price. The time when the order is placed and the time when the order is executed is very important. The trading system at the stock exchange can only show the time of execution of the order and not the time when the order was placed by the client. The order book is necessary for establishing as to when the order was placed and also the facts as mentioned above namely the name of the client, description and value of securities, terms and conditions of the order etc. These particulars are important to ascertain as to whether the stock broker has acted faithfully with the client, had acted with due skill and care etc. The submissions of the said broker that the orders were entered online and delay would cause loss is not sufficient and satisfactory for not maintaining the order book. The order book has to be maintained showing the particulars mentioned above. Therefore, I find that the said broker has not maintained the order book and has violated the above mentioned SEBI circular no.SMD/POLICY/IECG/1-97 dated 11.2.97

4.3 Rule 15(1) (g) of the SC(R)R, every stock broker is under obligation to maintain and preserve the Document Register showing full particular of shares and securities received and delivered. Regulation 17(1) (g) of the said regulations also require maintenance of the said document register. As per SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993, it is provided that the brokers shall buy / sell securities on behalf of clients only on receipt of margin of minimum 20% on the price of the securities proposed to be purchased unless the client already has an equivalent credit with the broker. In terms of Regulation 17(1)(k) of the said regulations a stock broker is required to maintain the Margin Deposit Book. It is the statutory requirement prescribed under the said regulations and every stock broker is under obligation to comply with it. It is for the safety and integrity of the market and proper regulation of the stock broker. These requirements are required to be complied with compulsorily. The submission of the said broker that it had maintained the margin deposit book in the form of a statement downloaded from CSE is not acceptable as the stock broker has to maintain the margin deposit book in respect of the margins collected from the clients and also for record of margins deposited with the stock exchange. It is not acceptable that the margin collected from the clients can be shown in the margin statement in respect of the margin deposited by the broker with the stock exchange. I find that the said broker has violated the provisions of the above mentioned rule 15 (1) (g) of the SC(R)R and also the provisions of Regulation 17 (1) (g) and (k)of the said regulations.

4.4 I agree with all the findings of the enquiry officer as recorded in the Enquiry Report. It is noted that in respect of delay in transfer of securities of clients from the pool account to the clients account the said broker has submitted altogether new submissions without substantiating the same in the inspection report it was observed that the said broker had delayed transferring the securities of clients from his pool account to the client account as under-

Scrip	Name of client		Qty	Pay-out date	Date of transfer	Period of delay
1.	Globe Capital Markets	DSQ Software	1100	2/8/99	13/9/99	24 days
2.	Globe Capital Markets	Reliance Ltd.	20	4/10/99	19/11/99	46 days
3.	Dalmia Securities	DSQ Software	100	10/9/99	18/12/99	99 days
4.	Abhipra Capital Ltd.	L& T	50	30/4/99	26/5/99	26 days
5.	Abhipra Capital Ltd.	SBI	200	20/11/98	7/01/99	48 days

In its comments vide its letter dated 24.2.01, the said broker had submitted that the delay in transfer of securities from pool account to their clients' account in the cases cited in the inspection report was due to the specific and written request of clients. The delay is sometimes due to the reason that the same securities are delivered by in next settlement and clients request for the same. Alongwith the said comments it had submitted the above mentioned letters from Globe Capital Market and Mr. T. C. Prabhu. Further in reply to the show cause notice issued by the enquiry officer, the said broker vide its reply dated 25.5.02 has reiterated the submissions and submitted the copies of the same letters. However in the reply dated 7.9.02 it has submitted that Dalmia Securities and Abhipra are not its clients and has enclosed the same letters again. There is no material substantiating this new submission. I do find any substance in the said submission of the broker. During inspection and enquiry it has admitted the delay and now it has brought different submissions without any substance. I reject the said submission of the broker and agree with the findings of the enquiry officer. The show cause notice gave 5 instances where there was delay in transfer of demat securities from pool account to the client account. I observe that the broker has sought to justify the delays in delivery of securities from pool account to beneficiaries' account on the plea that the same were authorized by some of the clients. As per the circular dated 7.5.99 a member is required to deliver the shares to beneficiary account immediately after pay out and make the balance in the pool account nil within 15 days of pay-out. Such requirement cannot be waived or authorized by the client. The obligation is on the broker to make the balance in the pool account nil within 15 days of the pay-out. If the brokers are allowed to hold the shares for period over 16 days to 216 days, it would make mockery of a depository which is supposed to hold the demat shares. In this case the said broker has violated clause B (1) of the Code of Conduct as specified in Schedule II read with regulation 7 of the said regulations read with SEBI circular no.SMDRP/POLICY/CIR/11-1999 dated 7.5.99.

4.5 I find that the said broker has not maintained proper segregation of the clients account and its own account as specified in circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and bye-law 231A of the CSE. By the said circular the SEBI has specified the norms regarding Regulation of Transactions Between Clients and Brokers and it has been made compulsory for all the brokers to keep the money of the client in a separate account and their own money in a separate account. Further, it has been stipulated that no payment for transactions in which the member broker is taking a position as a principal will be allowed to be made from the clients account. Bye-law 231A of CSE provides that it shall be compulsory for all members to keep the money of the clients in a separate account and their own money in a separate account. Further, no payment for transactions in which the trading members is taking position as a principal will be allowed to be made from the clients account by the above mentioned circular bye-laws. It has been further provided that no money shall be drawn from clients account other then money properly required for payment to or on behalf of the client for or towards payment of a debt due to the member from the clients or money drawn on client's authority or money in respect of which there is a liability of clients to the trading member. Vide circular no. SMD/MDP/CIR/043/96 dated August 5, 1996 it has been directed that in case of deficiency in having separate bank account for clients but not segregating clients funds from the own funds by the brokers, a serious view will be taken. I find that the said broker has committed the violation as observed in the inspection / enquiry report and has used the clients money towards the expenses like advance tax and electricity charges as found in the Enquiry Report etc which is clearly in violation of the SEBI circular and the CSE Bye-laws. Further the submissions of the said broker regarding payment of an amount of approx. 5 crores as found in the Enquiry Report from the clients account is also not convincing and acceptable. The said broker has submitted misleading information in this regard as found hereinabove. I find that the said broker has violated the condition of registration as provided in Rule 4 (b) of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 which provides the Board may grant certificate to a stock broker subject to inter alia condition that he shall abide by the rules, regulations and bye-laws of the stock exchange.

5.0 In view of the above observations I find that the said broker is guilty of having violated the provisions of clauses A(5) and B(1), of the Code of Conduct as specified in Schedule II read with Regulation 7 of the Regulations and Rules 4(b) of the SEBI (Stock Brokers and Sub-brokers) Rules, 1992, rule 15(1) (g) of the SC(R)R, regulation 17 (1) (g) of the said regulations, CSE Bye-laws and SEBI directives contained in the circulars as found hereinabove. In view of the same, the said broker is liable for action under regulation 25 and 26 of the said regulation read with regulations 13 (1) (b), 13(6) read with regulation 23 of the SEBI (Procedure for holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

5.1 Under section 11 of the SEBI Act, SEBI can take measures to protect the interests of investors and to regulate the securities market inter alia by registering and regulating the working of stock brokers. The directives contained in the SEBI circulars are the measures for regulating the working of the stock brokers. Further, the Code of Conduct specified in Schedule II of the said regulations also provides for the minimum standards for the working of the stock brokers. If the regulatory requirements are violated by the stock brokers without attracting any action, the measures taken by SEBI for regulation of the stock brokers would be rendered nugatory and the regulatory function would be jeopardized. These requirements of contract notes, time stamping etc are the requirements which SEBI has put in place for the purpose of investor protection and to remove certain mala fide practices. Further the requirements regarding margin collection and prohibiting off the floor transactions are provided as a measure of risk containment and to provide for transparency and fairness in the transactions. The requirements regarding maintenance of records etc. have been mandatorily provided to ensure that the business and conduct of the intermediaries are undertaken on the basis of sound business principles and to ensure that the regulator can regulate the business of stock brokers through inspections / enquiries.

5.2 It is to be noted every stock broker is under obligation to comply with the provisions of the Act and the Rules and Regulations made thereunder as also the circulars and guidelines issued by the Board from time to time. It is also imperative that all the members of the stock Exchange shall adhere to the bye-laws of the Exchange. Regulation 7 of the said Regulations provides that the stock broker holding the certificate shall at all times abide by the Code of Conduct as specified in Schedule II. Further, Clause A (5) of Schedule II provides that a stock broker shall abide by all the provisions of the Act and the Rules, Regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

6.0 I find that the said broker has committed several violations as observed above and has not taken due care and diligence in observance and compliance of the statutory requirement in conduct of its business as a stock broker. I am satisfied that it is necessary to secure the proper management of the stock broker and also in the interest of the securities market that a penalty of suspension of certificate of registration for a period of nine months is reasonable in view of the above facts and violations committed by the said broker. Therefore, in exercise of the powers conferred upon me by virtue of sub section (3) of section 4 of the Securities and Exchange Board of India Act, 1992 read with regulation 29(3) of the said regulations I hereby order that the certificate of registration of M/s Agbros Securities Private Limited - SEBI Registration no. INB 031017534, a member of the Calcutta Stock Exchange Association of India Limited be suspended for a period of nine months.

6.1 This order shall come into effect after three weeks from the date of this order.

DATE : April 23, 2003.

PLACE: MUMBAI

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA