

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER REGULATION 13 (4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST M/s NAM SECURITIES LTD., MEMBER, NSE

1. M/s NAM Securities Ltd. is registered with SEBI as a stock broker (hereinafter referred to as 'the member') bearing SEBI registration no. INB 230771039 and is a member of National Stock Exchange (NSE). An inspection of books of accounts, documents and other records of the member was conducted on 14.12.2000. During the inspection, several irregularities were found committed by the member.
2. The findings of the inspection were forwarded to the member vide letter dated 2.03.2001 advising the member to give its comments, if any. The member vide letter dated 12.04.01 replied to the said findings of the inspection report. On not being satisfied with the reply filed by the member an Enquiry officer was appointed vide order dated 16.12.2002 to enquire into the following allegations of violations against the member:
 - (a) Clause A(5), B(1) & B(2) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.
 - (b) Directives issued by SEBI vide circular nos. SMD/MDP/CIR/043/96 dated 05/08/96, SMD/(B)/104/22775/93 dated 29/10/93, SMD/POLICY/IECG/1-97 dated 11/2/97, SMD/SED/CIR/93/23321 dated 18/11/93 and SMD-1/23341 dated 18/11/9
 - (c) Rules, Regulations and Byelaws of NSE as amended from time to time and directives of NSE
3. The Enquiry Officer submitted her report on 30.05.2003. In her report, taking into account the irregularities that have been established against the member, the Enquiry Officer recommended suspension of certificate of registration of the member for a period of one month. The Enquiry Officer found that the member committed the following violations:
 - 3.1 The contract notes did not bear pre-printed serial numbers on the contract notes but were generated on settlement basis through computer software.
 - 3.2 Duplicates of the Contract Notes were not acknowledged by the clients.
 - 3.4 Terms and conditions as well as SEBI Registration Number were not mentioned on the contract notes issued.
4. In terms of regulation 13(2) of SEBI (Procedure For Holding Enquiry By Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'the said regulations') a show cause notice dated 04.07.2003 was issued to the member to show cause as to why the penalty as recommended by the enquiry officer should not be imposed on him. The member was advised to submit its reply, if any, within 15 days of the receipt of the show cause notice failing which it would be presumed that it has no explanation to offer. The member was also asked to intimate along with the reply whether it desired a personal hearing. The member vide letter dated 11.08.2003 replied to the show cause notice dated 04.07.2003. The member made, inter alia the following submissions:
 - a) The member submitted that it issued each contract note serially numbered in accordance with the act, rule and regulations. In the findings it was accepted by the enquiry officer that the computer generated serial nos. are also acceptable provided they run continuously from first day till the last day of the financial year. Settlement wise generated serial no. does not reclude possibility of manipulation as contract note can always be inserted / taken out between the 2 settlements whereas during inspection of 2 years accounts, there was not a single case of insertion / deletion of the contract notes. Insertion / deletion of the contract note pre-requires insertion / deletion of a trade, which did not happen in case of the member. The member submitted that just on mere assumption on the possibility of insertion / deletion of the contract notes, which had never taken place, recommending a penalty of suspension is unlawful and unjustified.
 - b) The member submitted that the contract notes were invariably issued and acknowledged by all the clients. The member stated that the acknowledgement of the contract notes by the clients was invariably completed in due compliance to the rules and regulations of the stock exchange and SEBI. However, the Enquiry Officer had held that, non production of the contract notes led to non verification of the said submission and brokers contention is not sustainable. The member further submitted that the copies of the contract notes duly acknowledged were also produced at the time of inspection. The fact can be proved from the reference at various places made by the inspection team in their report, to the contract notes all of which bear acknowledgement from the client.
 - c) The member submitted that the allegation that the terms and conditions as well as SEBI registration no. not mentioned on the contract note issued is wrong due to the fact that the member was using pre-printed contract note which invariably carries all the terms and conditions as well as SEBI Registration No. on the contract notes. The member further stated that there were several references at various places of the contract notes issued by it and the SEBI team found each of them in order laying full terms and conditions and SEBI Registration no.
5. The member was given an opportunity of hearing on 15.9.2003. Shri Ashwani Goyal, Whole Time Director of the member appeared and made submissions. During the course of the hearing the member submitted the written submissions dated 15.9.2003 reiterating its earlier submissions made by its letter dated 11.8.03 in reply to the show cause notice dated 4.7.03.
6. I have carefully examined the facts and circumstances of the case. I have also carefully considered the Enquiry Report and the submissions made by the member vide letter dated 11.08.2003 and 15.9.2003. On appreciating the facts and circumstances of the case my findings are as under:

6.1 With reference to the contract notes, the contract notes did not bear pre printed serial nos. but were generated on settlement basis through computer software, I find that the member admitted that the contract notes did not bear pre printed serial nos. for the financial year and were generated on settlement basis. I agree with the enquiry officer's view that the computer generated serial nos. are also acceptable provided they run continuously from 1st day till last day of the financial year. Further that settlement wise generated serial nos. do not preclude possibility of manipulation as contract note can always be inserted / taken out in between the two settlements. Therefore, practice of the member is not in consonance with SEBI Circular Nos. SMD/MDP/CIR/043/96 dated 5.8.96 and Para A(5) of Code of Conduct specified in Schedule II read with Regulation 7 of SEBI (Stock brokers & sub brokers) Regulations, 1992.

6.2 With reference to the allegation that duplicates of the Contract Notes were not acknowledged by the clients, I find that the member was not able to produce 3 contract notes which were not traceable on the inspection date and later submitted the contract notes. It was further submitted that two instances were reporting errors of the inspection team. I agree with the Enquiry Officer that non-production of contract notes before the inspection time tantamount to non-maintenance of the same. However, as the member had submitted the photocopies of contract notes the member can be granted a benefit of doubt on this count.

6.3 With reference to the allegation that the terms and conditions as well as SEBI Registration Number were not mentioned on the contract notes, I find that the member admitted its mistake and during the hearing the member submitted that the photocopies of the contract notes were taken on one side therefore the terms and conditions which were on the backside of the contract note were not found. The member submitted that the error has been rectified.

6.4 In respect of allegations relating to delay in payment and inter-client adjustment of balances, the enquiry officer found that the member had submitted that the consent letters from clients for retention of funds or specific written request of clients for inter-se transfer of funds before the amounts were retained or inter-client transfer of funds was done. Further, the enquiry officer noted that the consent letters from clients were not shown to the inspection team, therefore, there is a possibility that they might have been obtained later. The enquiry officer recommended for a lenient view to be taken as there are no complaints against the member in this regard.

7. In light of the above findings, it is found that the violations committed by the member are small and technical. Therefore, I am of the considered view that any penalty of suspension of certificate of the member would be on higher side. A warning would suffice in the present case.

8. Therefore, in exercise of the powers conferred upon me by Section 19 of SEBI Act, 1992 read with sub-regulation (4) of Regulation 13 of the said Regulations, I hereby warn M/s NAM Securities Ltd., Member, NSE to be careful in future and scrupulously adhere to the provisions of Securities Contracts (Regulation) Act, 1956 and the Rules framed thereunder, SEBI Act, 1992 and the Rules and Regulations framed thereunder and directions issued by SEBI from time to time.

PLACE: MUMBAI

Date : 30th OCTOBER, 2003

A. K. BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA