

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

ORDER UNDER SECTION 11 (4) OF THE SEBI ACT, 1992
IN THE MATTER OF SANJAY KHEMANI, MEMBER OF CALCUTTA STOCK
EXCHANGE

CO/203/MRD/02/2004

1. Sanjay Khemani is a member of the Calcutta Stock Exchange and is registered with SEBI as a stock broker with Registration No. INB030693921.
2. The Securities and Exchange Board of India (hereinafter referred to as SEBI) initiated investigation against Shri Ketan Parekh and some entities associated with him (hereinafter referred to as KP Group) and also some brokers of the Calcutta Stock Exchange (hereinafter referred to as the CSE) including M/s Sanjay Khemani (hereinafter referred to as the broker) for alleged market manipulation. During the course of investigation, SEBI prima facie found that several lapses and violations have been found committed by the broker, which resulted in market manipulation.
3. A show cause notice dated November 7, 2002 was issued to the broker, stating the alleged lapses and violations, to show cause as to why appropriate directions should not be issued under sections 11 and 11B of the SEBI Act, 1992 restraining him from trading or dealing in securities market pending completion of investigations. The main allegations in the Show cause notice are interalia as under :
 - 3.1 That the broker by transacting in huge volumes of off the floor transactions organized a parallel stock exchange for the purpose of assisting in, entering into or performing contracts in Securities and also by concealing

these off the floor transactions, appears to have acted in violation of Section 19(1) of the Securities Contract Regulations Act, 1956.

3.2 That by concealing the dealings of the clients including the KP Group and by giving wrong declarations to CSE, the broker avoided compliance with the prudential exposure limits and margin requirements of CSE prevailing during the relevant period and thereby, interfered with the fair and smooth functioning of the market in violation of Regulation 4(b) of SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995.

3.3 Violation of Regulation 7 of SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 read with Clause A (1, 4 & 5) of Code of Conduct stipulated in Schedule II of the said Regulations.

4. Opportunity of hearing was given to the broker twice on 30.11.2002 and 18.12.2002. The broker failed to avail the opportunity of hearing. After carefully considering the submissions of the broker made vide letters dated 18.11.2002 and 17.12.2002, an interim order dated 21.01.2003 was passed debarring the broker from associating with securities market activities and dealing in securities market till the completion of investigation and enquiry. During the said period, the broker was directed not to buy, sell or deal in the securities market directly or indirectly.

5. Subsequently, SEBI vide order dated 15.11.02 appointed an Enquiry Officer to enquire into the alleged violations of -

- (i) Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995;
- (ii) Rule 4 (b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992, Regulation 17(1)(k) of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and regulation 7 of the said Regulations read with

clauses A(1), (4) & (5) of the Code of Conduct stipulated in Schedule II of the Regulations;

- (iii) Section 19 (1) of the Securities Contracts (Regulation) Act, 1956;
- (iv) CSE's Notice dated September, 1999 and CSE's bye-laws 332 and 334 (iii);
- (v) Violation of SEBI Circulars:-
 - (a) SMD/Policy/IECG/1-97 dated 11th February, 1997 Non-Maintenance of Order Books and margin deposit books etc;
 - (b) SMD/Policy/CIR/5-97 dated 11th April, 1997 – clients agreement inadequately maintained;
 - (c) SMD/Policy/CIR-Cir-3/98 dated 16th January, 1998 – dealing with members of other exchanges without obtaining registration as sub-broker;
 - (d) SMD/Policy/Cir-35/98 dated December 4, 1998 on Member not collecting any margin from his clients;
 - (e) SMD/SED/CIR/93/23321 dated 18th November, 1993 and of SMD/MDP/CIR/043/96 dated 5th August, 1996 – delay in making payment to the clients beyond 48 hours of the pay-out date;
 - (f) SMD/SED/CIR/93/23321 dated 18th November, 1993 non-segregation of own funds and the funds belonging to the client; and
 - (g) SMDRP/Policy/Cir-32/99 dated September 14th, 1999 on banning of negotiated deals, off-the-floor transactions, synchronized deals, cross deals etc,

- 6. The Enquiry Officer after conducting the enquiry according to the procedure laid down in the SEBI (Procedure for holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the "Enquiry Regulations") submitted his report dated

13.06.2003 recommending a penalty of suspension of the certificate of registration for a period of two years.

7. After submission of the said Enquiry Report, a show cause notice dated July 03, 2003 as per Sub Regulation (2) of Regulation 13 of Enquiry Regulations was issued to the broker. The broker replied vide his letter dated 18.07.2003 to the said show cause notice making the following submissions.

7.1 The broker stated that he was not provided with any material data to which he is legally entitled. Further, he stated that the enquiry cannot go beyond the show cause notice and the show cause notice dated 11.12.2002 was deficient in as much as the same did not disclose the material facts relating to the charges enumerated in the Enquiry Report.

7.2 The broker submitted that he has not in any manner violated regulation 17(1)(k) of the Stock Broker Regulations as alleged. The transactions were executed through the C Star mechanism of the CSE, the requisite data that formed a part of the order book, margin register was always available on the computers at CSE. The broker further stated that the fact that SEBI has not prescribed for any particular format for the Order Book and Margin Register in itself indicates that it is not a crucial register / document and most of the orders were taken over the phone and the said details were electronically stored ensuring that the requisite data was always available with the CSE. Further, the broker stated, that this data, which could be always downloaded as per the requirements, is more authentic and tamper proof, thereby, ensuring that the purpose of maintaining the information is achieved. Therefore, the broker submitted that not maintaining such book and register in a physical format is merely due to oversight and failure to maintain the order book; margin register as alleged, is merely a technical lapse.

7.3 Regarding incomplete client registration forms, the broker submitted that filing up all details is not mandatory and hence there was no violation of the SEBI circular dated 16.1.1998 as alleged in the Report. Further, the broker stated that omission to furnish the information as pointed out in the Report is merely a procedural non-compliance and if there is information to satisfy the credentials of the client, few insignificant omissions are not fatal and the same cannot be construed as an intentional defiance of the circular as alleged in the Report.

7.4 The broker denied that he has violated the SEBI Circular dated 16.1.1998 which prohibits a member from entering into transactions with brokers of other exchanges not registered as sub brokers. The broker submitted that the transactions with the members named in the report were executed by him on his own account. He was not acting for his clients, neither as sub brokers nor as remiser. The broker stated that the requirement regarding registration as sub broker or approval as remisers is relevant only when they are working for their clients and not for themselves and that there is no evidence till date to show that the persons named in the Report with whom his clients admittedly had dealings with, ever acted as sub brokers.

7.5 With reference to the finding on non-collection of margin, the broker submitted that they have documented evidence to show that they have not defaulted in collecting the margin from their clients pursuant to the requirements of the SEBI Regulation / Circulars.

7.6 The broker submitted that he has not contravened the requirements of circular dated 18.11.93 and 5.8.96 regarding delayed payments, as alleged in the Report. The broker stated that he always acted under instructions of his client and that most of his client dealings were on account. The delay if any could be due to inadvertence and or oversight and the same should not be attributed to willful default on the part of his clients. The broker submitted that the allegation of delayed payment is

merely a technical lapse. Such delay if any is insignificant and not fatal and therefore there is no intentional breach of the circulars as alleged.

7.7 The broker stated that he has not entered into any negotiated deals as alleged in the Report. All his dealings were within the framework of the CSE executed through C Star. He has duly reported all the transactions and submitted audited accounts of the same to CSE. Therefore, the broker stated that, he has been very transparent in his dealings and has never interfered with the price discovery mechanism of the CSE. The broker submitted that had there been any negotiated deals matched as alleged, CSE should not have accepted such transactions and that by not raising any objection to his transactions and duly accepting the same, assuming that the same were in fact negotiated deals matched, CSE has itself disregarded the said circular. The broker stated that he has in fact been reporting all the transactions and never interfered with the price discovery mechanism nor in any manner obstructed the development of the securities market in contravention of item A3 of the Code of Conduct and the circular dated 14.9.1999.

7.8 The broker denied that he has entered into huge off-the-floor transactions and alleged that despite consistent and repeated requests to the SEBI he is not till date been provided with the necessary / requisite documents pertaining to the said allegation regarding off the floor transactions leveled against him and he is not knowing as to how the figure of Rs.12639.64 crores alleged to be off the market transactions has been arrived at. The broker stated that the amount of Rs.12639.64 crores would be inclusive of compulsory carry forward positions of shares and the permissible market Badla done in the CSE of shares with their values that are not accountable in determining value of off market deals and this amount of off market deals would also include Bad deliveries returned received from clients and brokers and returned to them after rectification from CSE which otherwise to be excluded for calculating the volume of off the market transactions.

7.9 The broker submitted that he has executed all the transactions through the C Star mechanism of CSE and all his dealings were within the parameters of the CSE and were duly reported to the CSE and thus were within the knowledge of CSE. Therefore, the broker stated that, the allegation of indulging in parallel stock exchanges against him is merely based on surmises and not a single investor has till date complained against him alleging any unfair trading detrimental to investor's confidence in the stock market. The broker stated that he had acted within the SEBI Regulations and have not in any manner violated Section 19 of the SCRA and item A(3) of the Code of Conduct.

7.10 Regarding synchronized deals, the broker stated that a set of transactions are simply categorized as synchronized trade / matching transactions without explaining the basis of such finding. The broker with reference to Annexure A, in the show cause notice dated 28.5.2003, stated that there is a glaring difference of 50,800 between the buying and selling quantity of shares shown as 65,3800 and 60,300 respectively. Further that as the trading is completely computerized and said transactions being intra day transactions, no adverse inference as regards matching trade etc can be drawn against him.

7.11 Regarding lending money from client funds, the broker submitted that it was a general practice for members to act on their own account and to borrow funds from clients accounts with the express approval /consent of the clients and these funds were utilized for jobbing, arbitrate, investment and trading by him with his client's knowledge and prior consent. Therefore, the broker stated that, violation in this regard if any should at the most be construed as a technical lapse and not a deliberate contravention of the stock exchange regulations so as to penalize him.

7.12 The broker submitted that the Hon'ble SAT has in an important judgment opined that for proving violation of Regulation 4, with particular reference to 4a and 4d of the SEBI Regulations, 2 things have to be established : a.

Intention of the parties, b. Mens rea; The breach if any on his part is only due to technical lapse, inadvertence or oversight. The contention that he has intentionally violated the regulations under the SEBI Acts, in the facts and circumstances of this case is far fetched and out of place.

7.13 The broker submitted that recommended penalty of 2 years suspension of registration in the Report against him is unreasonable unjust and unfair as the violations for which he is charged are merely technical / procedural lapses, inadvertent, or through oversight for which no penalty is warranted in the given facts and circumstances. Further, the broker submitted that as a preventive measure, he has not been transacting any business at the CSE from April 2000 till date to ensure fullest cooperation with the SEBI officials in expediting the inquiry.

8. Subsequently, an opportunity of hearing was given to the broker on 20.10.2003. Ms. Sony Jose George, Mr. Advait Sethna, Ms. Geeta Mathur and Mr. Sugata Gosh of Singhania & Co. attended the hearing and made submissions. On request, 7 days time was given to file their written submissions containing the submissions made during the hearing. The broker vide letter dated 27.10.2003 furnished its reply. Most of the submissions were reiterating its earlier submissions made vide letter dated 18.07.2003. The submission in addition, *inter-alia*, are as follows:

8.1 The broker submitted that the thrust of the show cause notice dated 7th Nov, 2002 was on his alleged association with KP group. The broker submitted that he transacted business through the CStar mechanism of the CSE, within the parameters of the exchange and therefore it was practically not possible to discover / make out the identity of the clients. The broker stated SEBI has not provided any material or instances to establish any association, direct or indirect with the KP Group and proceeded merely on a hypothesis of guilt by association.

8.2 As regards the allegation that the broker has entered into huge volume of Off the Floor Transactions is concerned, the broker stated that there are discrepancies in the CSE Statements for the years 1999-2000 wherein an amount of 183 crores (approx.) representing compulsory carry forward transactions and around Rs.3 lakhs accounts for Bad Deliveries was wrongly included in the calculation of alleged off the floor transactions. The broker stated that he had duly reported the amount of Rs.409 crores (approx.) to the CSE.

8.3 With reference to the CSE statements pertaining to 2000-2001, provided by CSE at SEBI's request is not exhaustive / complete, as also stated therein. The broker stated that he is hesitant / doubtful of the accuracy of this data and it cannot be assumed at this stage, that the same does not suffer from any discrepancies / anomalies as observed in the statements of 1999-2000.

8.4 The broker submitted that an amount more than Rs.2.5 crores representing 65,000 shares of Ranbaxy representing compulsory carry forward transaction was wrongly included in the alleged off the floor transactions. The broker alleged that no clarification, till date has been provided to him till date, inspite of repeated requests to explain the same. The broker stated that no conclusive inference of guilt can be drawn against him on the basis of such material / data which suffers from serious infirmities as elucidated above.

8.5 The broker submitted that there is no evidence / material to show that there was an attempt by the broker to artificially increase or depress the price of securities and thereby interfere with the price discovery mechanism of the stock exchange. Thus such allegations merely based on surmises, unsupported by any concrete data / material cannot survive.

8.6 The broker stated that if the finding of penalty is implemented, the same would tantamount to "Double jeopardy" as he cannot be punished for

same offence i.e. violation of SEBI Regulations and CSE bylaws for which he has been prosecuted and punished by the CSE vide its order dated 8th August, 2002.

9. I have carefully considered the Enquiry Report and the submissions made by the broker before me and vide letters dated 18.07.2003 and 27.10.2003. My findings are as under:

9.1 Regarding the submission of the member that he has not been provided any material data to which he is legally entitled and that the enquiry cannot go beyond the show cause notice and the show cause notice dated 11.12.2002 was deficient in as much as the same did not disclose the material facts relating to the charges enumerated in the Enquiry Report, I find no merit in the submissions of the member. I find that the inspection was conducted by an order dated 18th September, 2001 for the year 2000-2001, 2001-2002 (till November, 30, 2001) by officials of SEBI, Eastern Regional Office of SEBI. I find that the objective of inspection was specified in the order dated 18th September, 2001. I further find that a notice of inspection was sent to the member by SEBI, Head Office that SEBI would undertake inspection of its books of accounts and other records during the month of November, 2001. The inspection team collected data from the broker's office itself. It is pertinent to note that inspection was also conducted against other brokers of Calcutta Stock Exchange. A copy of the finding of inspection was forwarded to the member by SEBI vide its letter dated 22nd May, 2002 for seeking parawise comments on the inspection report. The member vide his letter dated 9th July, 2002 responded to the parawise finding of inspection. As the explanation of the member was not found satisfactory, the enquiry was ordered as per the regulations. Further, the Enquiry Officer forwarded the findings of inspection and the allegations in respect of violation of various rules and regulations and SEBI circulars. During the proceedings the

Enquiry Officer gave several opportunities of hearings. After the submission of the Enquiry Report dated 13.6.2003, a show cause notice dated 3.07.2003 was issued to the broker, enclosing a copy of the Enquiry report, seeking his comments on the findings of the Enquiry Officer. Subsequently, the broker was given an opportunity of personal hearing before me on 20.10.2003. In all the aforesaid instances, the broker never appeared in person to explain his case.

9.2 Further, the data collected from the broker on which SEBI relied to pass interim order dated 21.01.2003 was provided to the broker vide SEBI letter dated 05.12.2002. Also, as requested by the broker the inspection of documents that were relied upon by the Enquiry Officer were provided on 18.08.2003 to the broker. Therefore, there is no truth in the submissions of the broker that he was not provided with any material or the enquiry was conducted beyond the scope of show cause notice.

9.3 The broker submitted that he has not in any manner violated regulation 17(1)(k) of the Stock Broker Regulations as alleged. The transactions were executed through the C Star mechanism of the CSE, the requisite data that formed a part of the order book, margin register was always available on the computers at CSE. The broker further stated that the fact that SEBI has not prescribed any particular format for the Order Book and Margin Register in itself indicates that it is not a crucial register / document and most of the orders were taken over the phone and the said details were electronically stored ensuring that the requisite data was always available with the CSE.

9.3.1 I find that the above submission of the member clearly show the cavalier attitude of the member in dealing as a broker. Regarding the order book, SEBI Circular No. SMD/POLICY/IECG/1-97 dated February 11, 1997, stipulates that the member should maintain record of time when the client has placed order. This information is

to be maintained by the broker in the order book. It should generally contain the following information:

- Identity of the person placing the order
- Date and time of order received
- Name of client, description ,value of securities to be bought and sold
- Terms and conditions of the order
- Reference no. of contract issued.

I find that the member does not maintain any Order Book. The broker submission that most of the orders were taken over the phone and the said details were electronically stored and that they receive the orders from their clients over the telephone and also confirms the execution to his clients on phone, cannot be accepted. If the broker's submission is accepted then an important record to verify whether the investors who dealt with the broker received the best price at the desired time would be missing. If the broker's submission is accepted, the very purpose of the regulatory requirement of maintenance of order book as prescribed by the said circular is defeated. Therefore, I find that the omission of the broker is in violation of SEBI Circular No. SMD/POLICY/IECG/1-97 dated February 11, 1997.

9.3.2 Further, I find that as per B (1) of Code of Conduct under schedule II of Stock Broker Regulations, a broker has to execute order at best available market price. The order book also helps in ascertaining whether the order was executed at best available market price. The maintenance of order book is thus a regulatory tool and also directed towards protection of investors.

9.3.3 Regarding maintenance of Margin Deposit Book, I find that margin deposit book is not being maintained by the member. It was

submitted that he was maintaining the margin statement downloaded from the Exchange system. Margin Deposit Book shows collection of margin from clients. The margin statement of the exchange shows margin at the broker level and cannot be a substitute for maintenance of Margin Deposit Book where particulars of margin from each client is required to be maintained. Thus by failure to maintain Margin Deposit Book I find that the broker has violated Regulation 17(1)(k) of stock broker regulation and SEBI circular dated 11.02.1997.

9.3.4 Regarding incomplete client registration forms, the broker submitted that filing up all details is not mandatory and hence there was no violation of the SEBI circular dated 16.1.1998 as alleged in the Report.

9.3.5 Regarding maintaining of Client Registration Forms, I find that the client-member agreement and client registration forms kept by the member are not being filled up. Instances are given as under:-

Sl. No.	Name of client	Deficiencies noticed in client registration forms
1	European Investment Ltd.	Incomplete Application, No agreement on stamp paper, MOA not kept.
2	Sudhir Kumar Kejriwal	Incomplete application, No introducer, No agreement on stamp paper.
3.	Narang Mercantile Ltd.	No agreement on stamp paper, MOA not kept.
4	B. Muthyap Reddy	No agreement on stamp paper, No introducer.

9.3.6 From the above table I find that the member has not maintained important particulars such as Memorandum or Articles of European Investment Limited, which is an overseas corporate body (OCB) incorporated in tax haven at Mauritius and there is also no introducer in some cases. These particulars are very important. The member has thus not complied with Rule 15(2)(c) of Securities Contracts (Regulation) Rules, 1957, 17(1)(k) of the SEBI (Stock Brokers and Sub-Brokers Rules and Regulations, 1992, and SEBI Circular No. SMD/POLICY/IECG/1-97 dated February 11, 1997.

10 Regarding non-collection of margin, the broker submitted that they have documented evidence to show that they have not defaulted in collecting the margin from their clients pursuant to the requirements of the SEBI Regulation / Circulars.

10.1 Members are required to pay margins as per the stock exchange bye-laws and regulations. The broker stated that he is maintaining the margin statement down loaded from the Exchange. It has been found that the broker is not collecting any margin from his clients upfront, as required under SEBI Circular no. SMDRP/POLICY/Cir-07/2000 dated February 4, 2000. Collection of upfront margin is a risk containment measure for maintaining safety and integrity of securities market. I find that the member violated SEBI circular dated 4.2.2000 by not collecting margin upfront from the clients.

11 Regarding delayed payments, the broker submitted that he has not contravened the requirements of circular dated 18.11.93 and 5.8.96 as alleged in the Report.

11.1 I find that a broker is required to deliver the securities/make payment to the clients within 48 hours of the pay-out declared

by the exchange for the relevant settlement as per the byelaws of the exchange in respect of client broker relationship and also Code of Conduct –B(1) of Schedule II of stock broker regulation. However, I find that in certain cases payments to the clients have been delayed much beyond the statutory period and in some cases there was delay of 20 days. Few instances are given below: -

Sl. No	Name of client.	Amount. (Rs.)	Pay out date	Date of payment	Period of Delay
1	Indarchand Sitaram	1,02,123	15/12/2000	27/2/2001	72 days
2	Kamlesh Kumar Prahladka	25,03,974	10/11/2000	1/12/2001	20 days
3	Radhe Shyam Kanodia	2,27,50,977	9/2/2001	21/3/2001	42 days
5	Trust House Sec.	85,12,959	28/4/2000	4/5/2000	6 days
6	Indarchand Sitaram	99,950	1/9/2000	21/9/2000	20 days

11.2 From the above I find that, the member has not complied with the SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993, byelaws of the exchange and Code of conduct B (1) under Regulation 7 of Securities and Exchange Board of India (Stock Brokers and Sub- Brokers) Rules and Regulations, 1992 and rule 4(b) of stock brokers rule.

12 Regarding segregation of clients money from the broker's own funds I find that SEBI circular no. SMD/SED/Cir/93/23321 dated November 18, 1993 and byelaws of the exchange in respect of client broker relationship, it is compulsory for members to keep the money of their clients in a separate account and their own money in a separate account.

- 12.1 According to the circular, the monies that can be paid into the clients account include money held or received on account of clients, such money belonging to member as may be necessary for the purpose of opening or maintaining the account, a cheque or draft received by the member representing in part money belonging to the client and in part money due to the member etc. Similarly, no money is to be withdrawn from the clients account other than money required for payment to or on behalf of clients, money belonging to the member as may have been paid into the client account in respect of the previously mentioned payments into the account, etc.
- 12.2 I find that the member has opened accounts with HDFC Bank (A/c no.0080305932-027), Global Trust Bank (A/c no. 1600 1011666), Indus Ind Bank (A/c no. 0015-601734-051) and ABN Amro (A/c no. 71980 10199), where all client related transactions are routed. It was found that the member has debited certain payments to the clients' account, which are not client-related payments. Few instances are given below:

Sl.	Payments made for	Date of Payment	Amount (Rs.)
1	Business Promotion	17/3/2001	25,708
2	Demat & Custodial charges	30/3/2001	1,34,620
3	Travelling Expenses	28/3/2001	23,298
4	Telephone Expenses	30/3/2001	26,992
5	Loan–Pradeep Kayan & Co (Member, CSE)	21/3/2001	8,00,00,000
6	Loan–DK Singhania (Member,CSE)	17/10/2000	3,08,00,000
7	Loan – H C Biyani (Member, CSE)	12/1/2001	1,13,00,000
8	Loan – H C Biyani (Member, CSE)	12/1/2001	98,50,000
9	Loan – Tackel Stock Brk. P. Ltd. (Member, CSE)	3/4/2000	40,00,000
10	Loan – S.S. Agarwal	17/10/2000	25,00,000
11	Loan – Vimla Devi Agarwal	17/10/2000	25,00,000
12	Loan–Sunil Kedia (Member, CSE)	19/10/2000	20,00,000

Sl.	Payments made for	Date of Payment	Amount (Rs.)
13	Loan – H C Biyani (Member, CSE)	18/1/2001	19,00,000
14	Loan – C.K. Tibrewala	28/3/2001	3,933

12.3 From the above instances, I find that the member has contravened SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and byelaws of the exchange as client broker relationship and rule 4(b) of SEBI stock broker rules by not segregating clients' funds and own funds.

13 The broker stated that he has not entered into any negotiated deals as alleged in the Report. All his dealings were within the framework of the CSE executed through C Star. He has duly reported all the transactions and submitted audited accounts of the same to CSE.

13.1 I find the following instances of negotiated deals were found in the books of accounts of the member which are based on sample check. The details are given below:

Name of the counter party	Date of Transaction	Scrip name	Buy/ Sale	Qty	Rate (Rs)	Total amt (Rs. crs)
Agbros Securities	28.9.2000	HFCL	S	70000	1364.50	9.55
Agbros Securities	28.9.2000	Global Tele	S	30000	1152.40	3.45
Tackel Stock Brk.	14.9.2000	HFCL	S	30000	1713.40	5.14
Tackel Stock Brk.	14.9.2000	Global Tele	B	35000	1642.30	5.74
M. Prasad & Co.	4.1.2001	HFCL	S	118000	1343.90	15.85
P.K.Goenka & Co	20.11.2000	HFCL	B	5000	1331.00	0.66
R.M.Stock Brok	1.2.2001	HFCL	B	15000	1075.00	1.61
N. Khemani	29.1.2001	HFCL	B	2000	1265.00	0.253

Agbros Sec	4.8.2000	HFCL	B	8000	1369.7 0	1.096
J. Bhartia & Co	15.12.2000	HFCL	S	2500	1512.1	0.378

13.2 By SEBI circular no. SMDRP/POLICY/Cir-32/1999 dated September 14, 1999, such deals have been prohibited as the same interferes with the price discovery mechanism and militates against the concept of stock exchange and same is also in violation of item A(3) of Code of Conduct. Therefore, I find that the broker has violated SEBI circular no. SMDRP/POLICY/Cir-32/1999 dated September 14, 1999 and item A(3) of Code of Conduct.

14 The broker denied that he has entered into huge off-the-floor transactions and alleged that despite consistent and repeated requests to the SEBI he is not till date been provided with the necessary / requisite documents pertaining to the said allegation regarding off the floor transactions leveled against him and he is not knowing as to how the figure of Rs.12639.64 crores alleged to be off the market transactions has been arrived at. The broker stated that the amount of Rs.12639.64 crores would be inclusive of compulsory carry forward positions of shares and the permissible market Badla done in the CSE of shares with their values that are not accountable in determining value of off market deals and this amount of off market deals would also include Bad deliveries returned received from clients and brokers and returned to them after rectification from CSE which otherwise to be excluded for calculating the volume of off the market transactions.

14.1 I find that appx. 50% of the broker's total turnover was on account of off-the-floor transactions. Further, while scrutinising the sauda books of

the member on a test check basis, it was found that the broker entered into many off-the-floor transactions . Some instances are given below :

Name of Scrip	Bought from	Rate (Rs)	Sold to	Rate (Rs)	Date of transaction	Qty
HFCL	J. Bhartia & Co.	1512.10	Self	1512.10	15/12/2000	2500
Silv Ind	Classic Credit	212.90	Panther Fincap	213.10	22/2/2001	13700
HFCL	Classic Credit	919.90	Renu Poddar	920.00	8/2/2001	70000
HFCL	Classic Credit	1105.70	Bikash Sureka	1105.80	1/2/2001	8000
HFCL	Classic Credit	1069.90	T. Jalan	1070.00	1/2/2001	8000
Zee Tele	Classic Credit	243.00	Renu Poddar	243.10	15/2/2001	250000
HFCL	Classic Credit	941.90	Renu Poddar	942.00	8/2/2001	35000
HFCL	Classic Credit	934.90	Renu Poddar	935.00	8/2/2001	80000
Silverline	Self	84.48	Sree Shyam Kamal Hotel	84.58	20/3/2001	50000
ZEE Tele	Self	423.40	Agbros Sec	423.40	4/8/2000	5000
HFCL	Self	1369.70	Agbros Sec	1369.70	4/8/2000	8000

Name of Scrip	Bought from	Rate (Rs)	Sold to	Rate (Rs)	Date of transaction	Qty
Global Tele	Self	1152.40	Agbros Sec	1152.40	28/9/2000	30000
Zee Tele	Self	249.90	Elecom Exports	250.00	1/2/2001	40000
Zee Tele	Panther Fincap	246.40	Rama Sec PLtd	246.50	1/2/2001	30000
Zee Tele	Panther Fincap	246.60	Rama Sec PLtd	246.70	1/2/2001	25000
Zee Tele	Panther Fincap	251.60	K N Choudhury	251.70	1/2/2001	13500
DSQ Soft	Panther Fincap	394.90	S K Phumbra	395.00	1/2/2001	60000
DSQ Soft	Panther Fincap	396.90	P.D.Mathran	397.00	1/2/2001	5500
DSQ	Panther	398.90	K.P.Bajaj & Co	399.00	1/2/2001	12500

Soft	Fincap					
RIL	Vikash Somani	344.00	Panther Fincap	344.10	1/1/2001	175000
RIL	Panther Fincap	339.90	Vikash Somani	340.00	1/1/2001	175000
Zee Tele	Panther Fincap	263.40	K N Choudhury	263.50	4/1/2001	25000
Zee Tele	Panther Fincap	264.75	Self	265.00	4/1/2001	1000
ITC	S K Phumbra	910.00	Panther Fincap	910.10	30/1/2001	40000
ITC	S K Phumbra	894.50	Panther Fincap	894.60	30/1/2001	1000
Satyam	Panther Fincap	327.65	S. P. Rakecha	327.75	2/1/2001	20000
Satyam	Panther Fincap	310.90	S. P. Rakecha	311.00	2/1/2001	30000
ITC	Panther Fincap	861.90	S K Phumbra	862.00	29/1/2001	41000
ITC	Self	880.00	MKM Share Bk	880.00	29/1/2001	57500

14.2 In view of the above, I find that the member has conducted/executed off-the floor transactions heavily during 2000-01 for generating his turnover by-passing a well-established exchange mechanism. While his self transactions have been mostly (74%) routed through the exchange, 58% (approx) of his clients' transactions had been made off-the floor. Even assuming, not accepting, the submission of the broker that there are compulsory carry forward positions of shares (183 crore approx.) and bad deliveries returned/received from clients/brokers (3 lac) and if the same are taken out from the total figure (Rs.12639.64 crores), the value of off-the-floor transactions would still be very high. However, it is relevant to mention that the findings/figures of the Enquiry Officer are based on test check basis and sample basis. This clearly brings out the violations committed by the broker.

- 14.3 I find that the member has not denied the fact that he had entered into off-the-floor transactions. In his submission before me or vide his letters dated 18.07.2003 and 27.10.2003 he has only contested the figures arrived at by the inspection team or by the Enquiry Officer in his report dated 13.6.2003. It is pertinent here to mention that the Enquiry Officer in the said report had stated that self transactions have been mostly (74%) routed through the exchange, 58% (approx) of his clients' transactions had been made off-the floor. It is to be noted that the percentage of off-the-floor transactions quoted by the Enquiry Officer is approximate figure. Further, the instances of off-the-floor transactions mentioned in the Enquiry Report are only few instances taken out from the sauda book of the broker on a test check basis. This itself indicates the magnitude of irregular conduct of the broker entering into such off-the-floor transactions.
- 14.4 I find that the off-the floor transaction interferes with price discovery mechanism and also militates against concept of stock exchange which brings large number of buyers and sellers in a transparent manner and thereby violated item A(3) of Code of Conduct under schedule II and SEBI circular dated 14.9.1999. Such large number of the off-the floor transaction also a market to organising a parallel stock exchange ie., conducting large transactions in securities outside the stock exchange mechanism which is in violation of section 19 of S.C.(R)Act.
- 14.5 I find that the member has also contravened SEBI Circular No. SMD/MDP/CIR/043/96 dated August 5, 1996. The member is also liable for penalty for evasion of margin under Bye-law 85 of the Calcutta Stock Exchange.
- 15 Regarding lending money from client funds the broker submitted that it was a general practice for members to act on their own account and to borrow funds from clients accounts with the express

approval /consent of the clients and these funds were utilized for jobbing, arbitrage, investment and trading by him with his client's knowledge and prior consent.

- 15.1 I find that certain fund transfer have been effected with the client without any apparent dues arising out of share dealings in the exchange. For example, the member had net payment obligation of Rs. 135 crores in settlement no. 2001145. On checking the bank book, it was found by inspecting team that a payment (Rs.135 crore) had been received from Panther Fincap, a client. Panther Fincap had paid this amount as part-payment to the member on account of a set of following off-the-floor transactions in HFCL carried on his behalf on 31/1/2001(period pertaining to sett. No. 2001144) as illustrated hereunder:-

Scrip	Bought from	Rate	Sold to	Rate	Quantity	Amount (Rs.Cr)
HFCL	Self	1250.00	Panther Fincap	1250.25	500000	62.51
HFCL	Self	1248.00	Panther Fincap	1248.25	500000	62.14
HFCL	Self	1245.00	Panther Fincap	1245.25	225000	28.02
Total						152.67

- 15.2 From the above, I find that the member has been using client's money for his own purpose or for other clients as broker which is in violation of SEBI circular dated 18.11.93 and byelaws of the exchange or client broker relationship.
- 16 The broker had submitted that the violations committed by him are mere technical or procedural lapses. I find that the broker's lapses such as entering into off-the-floor transactions, conducting negotiated deals, non-segregation of client's money and own funds, misuse of client's funds and dealing with unregistered sub-brokers

by no stretch of imagination can be called as procedural or technical lapses. The quantum and value of off-the-floor/negotiated transactions is higher than the overall turnover of most of the regional stock exchanges in India. This itself indicates the seriousness of violations committed by the broker and the deleterious effect such lapses would have on the development of securities market and the interest of investors of which SEBI is mandated to protect.

- 17 Further, the broker had submitted that there are no investor complaints against the broker. I find the same as not relevant and do not absolve the broker from shirking away from the responsibility that is cast on him by various provisions of SEBI Act and the Rules and Regulations made thereunder. The decision of Hon'ble SAT in Appeal No. 22/2003 (Radar Securities Vs SEBI) supports the said view wherein it was held that the fact that there were no complaints against the broker does not absolve it from the legal consequences for its omissions and commissions as a stock broker.
- 18 The broker stated that he has not been transacting any business at the CSE from April 2000 till date to ensure fullest cooperation with the SEBI officials in expediting the inquiry. I find the submission of the broker as false as till date the broker failed to appear in person on several opportunities of hearings before the Enquiry Officer or before SEBI.
- 19 The broker stated that if the finding of penalty is implemented, the same would tantamount to "Double jeopardy" as he cannot be punished for same offence i.e. violation of SEBI Regulations and CSE bylaws for which he has been prosecuted and punished by the CSE vide its order dated 8th August, 2002.

19.1 I find that the action which was stated to be initiated by Calcutta Stock Exchange was against Shri Sanjay Khemani as a member of Calcutta Stock Exchange in respect of violation of byelaws of the stock exchange. I find that as regards proceedings initiated by SEBI same was initiated pursuant to the inspection report against an intermediary stock broker. These are entirely two separate proceedings, one by a self regulatory authority against its member for violation of its byelaws. As regards SEBI the action was initiated pursuant to the finding of inspection for violation of its regulations ie., stock broker and other regulations. Thus there is no bar for conducting proceedings for violation of a separate regulation administered by SEBI and therefore the allegation of double jeopardy etc., is rejected.

20 I have no hesitation to agree with the findings of the Enquiry Officer that entering into large off the floor transactions (negotiated deals) is to be viewed seriously as it interferes with fair and smooth working of the market and price discovery mechanism and shakes the confidence of investors. The broker has also been found guilty of violating SEBI Regulations and circulars on segregation of client money, margin which are for protection of investors and also for maintaining safety and integrity of the market.

21 Therefore, in exercise of powers under Section 4(3) of the SEBI Act read with Regulation 16(5) of the Enquiry Regulations, I hereby suspend the certificate of registration of the Stock Broker, Sanjay Khemani for a period of two years. SEBI passed an interim order dated 21.01.03 debarring the broker from associating with securities market activities and dealing in securities market till the completion of investigation and enquiry. Taking into account the period since the date of coming into effect of the interim order, the broker's certificate of registration is suspended upto 20.01.05.

Date: 26.02.2004

Place: Mumbai

**G. N BAJPAI
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF
INDIA**