

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Order under Regulation 16(5) of the of Securities and Exchange Board of India (Procedure for holding enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 in the matter of proceedings against Acumen Securities Ltd., erstwhile member of National Stock Exchange.

WTMO/28/MIRSD/3/04

1.0 Background

- 1.1 Acumen Securities Ltd. (hereinafter referred to as “the said broker”) was a member of the Cash and Derivative Segments of the National Stock Exchange (hereinafter referred to as “NSE”). The said broker was granted certificate of registration No.INB230930334 in the Cash Segment and No. INF230930334 in the Derivative Segment.
- 1.2 The Securities and Exchange Board of India (hereinafter referred to as “SEBI”) was informed by NSE vide their letter dated 2.7.2003 that the said broker has been expelled from the membership of Cash and Derivative Segment of the exchange w.e.f. 1.7.2003.

2.0 Summary Proceedings

- 2.1 In pursuance of the said letter, vide order dated 31.7.2003, an officer (hereinafter referred to as “the designated officer”) was appointed under Regulation 16(1) of the SEBI(Procedure for holding enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 (hereinafter referred to as “the enquiry regulations”) to enquire into the contravention, if any, by the said broker of Regulation 15(c) of the enquiry regulations. The designated officer so appointed submitted her report to SEBI on 23.1.2004.

2.2 In her report, the designated officer has found that the said broker was expelled by NSE from its membership on 1.7.2003 for being declared as a defaulter. The designated officer has also mentioned in her report that the show cause notice dated 26.8.2003 issued to the said broker to their address as per records available with SEBI came back with the notings "shifted". The show cause notice was sent again to a fresh address provided by NSE and the same was received. However, the said broker failed to make any submissions before the designated officer. The designated officer has also observed that the said broker having been expelled from the membership of NSE has violated one of the conditions subject to which registration has been granted to them as a stock broker viz. that they should hold membership of a recognized stock exchange (per Rule 4(a) of the SEBI (Stock Broker and Sub Broker) Rules, 1992 (hereinafter referred to as "the broker rules"). The designated officer has therefore recommended that the certificate of registration granted to the said broker be cancelled.

3.0 Consideration of issues

3.1 I have considered the facts of the matter, the report of the designated officer and other material on record. The following issues arise for consideration :

3.1.1 Whether the said broker has violated one of the conditions subject to which registration has been granted to them as a stock broker.

3.1.1.1 I note that the said broker has been expelled from the membership of NSE w.e.f. 1.7.2003. This has been informed by the NSE to SEBI and the said broker has not contested the said expulsion.

3.1.1.2 I note that Rule 4(a) of the broker rules provides that:

“Conditions for grant of certificate to stock broker

4. The Board may grant a certificate to a stock broker subject to the following conditions, namely:-

(a) he holds the membership of any stock exchange.....”

3.1.1.3 In view of the above, I find that the said broker, having ceased to be a member of NSE has also ceased to comply with one of the conditions subject to which registration was granted to them as a stock broker.

3.1.2 Whether the certificates of registration granted to the said broker are liable to be cancelled.

3.1.2.1 I note that Regulation 25 of the SEBI (Stock Broker & Sub Broker) Regulations, 1992 provides that:

“Liability for action in case of default

25. A stock broker who –

- (a) fails to comply with any conditions subject to which registration has been granted,
- (b) contravenes any of the provisions of the Act, rules or regulations.
- (c) ...
- (d) ...
- (e) ...

shall be dealt with in the manner provided under the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.”

3.1.2.2 I note that sub regulation (1) of Regulation 13 of the enquiry regulations provides for imposition of major penalty of cancellation of certificate of registration and further sub-regulation (6) of the said

regulation provides that major penalty may be issued only under circumstances prescribed therein one of which is that the intermediary is guilty of violations of the conditions of registration.

3.1.2.3 I further note that Regulation 15 (c) of the enquiry regulations provide that it shall not be necessary to hold an enquiry where the intermediary being a stock broker ceases to be a member of a recognized stock exchange or has been declared a defaulter in relation to transactions at such exchange.

3.1.2.4 I have already found in Para 3.1.1 that the said broker has ceased to be a member of NSE and that thereby they no longer comply with one of the conditions of registration. In view of the above, I find that a major penalty of cancellation of the certificate of registration is liable to be imposed on the said broker.

4.0 Order

4.1 In the light of the findings mentioned above, I, in exercise of powers conferred on me under Section 19 read with Regulation 16(5) of the enquiry regulations, hereby cancel the certificates of registration No.INB230930334 and INF230930334 granted to Acumen Securities Ltd.

This order shall come into force with immediate effect.

Place: Mumbai

Date: 12.03.04

T M Nagarajan

Whole Time Member

Securities and Exchange Board of India