

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER REGULATION 13(2) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY REGULATIONS), 2002 AGAINST SHRI SURENDRA RASIKLAL SHAH, MEMBER, PUNE STOCK EXCHANGE, SEBI REGISTRATION NUMBER INB 110250614.

CO/ 122 /MIRSD/ 12 /04

1. Shri Surendra Rasiklal Shah (hereinafter referred to as "the broker") is a member of Pune Stock Exchange (hereinafter called as "PSE") and registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") under certificate of registration number INB110250614, having office at 191, Shukrawar Peth, Near Kala Haud, Pune - 411002.
2. SEBI conducted inspection of the broker in November 2002 and during the course of the inspection of books of account, several irregularities were noticed.
3. An enquiry officer was, therefore, appointed vide order dated 16.12.03 under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty), to enquire into the irregularities arising from the Inspection Report as more particularly set out in the order cited.
4. The Enquiry officer submitted his report on 24.08.2004 and found that the broker has violated various provisions of SEBI Act, Rules and Regulation made there under and recommended penalty of suspension of registration of the broker for a period of 15 days.
5. A show cause notice dated 27.08.2004 was sent to the broker alongwith a copy of the Enquiry Report as required under regulation 13(2) of Enquiry Regulations advising the broker to show cause as to why the penalty as recommended by the enquiry officer should not be imposed.
6. The broker vide letter dated 10.09.2004 filed his reply to the said show cause notice. The broker in his reply to the show cause made the following submissions :
 - That on 28.08.2004, he had received a letter dated 24.08.2004 from the enquiry officer in which he was imposed a minor penalty of Rs.25,000/- under section 15B of SEBI Act 1992. The broker further stated that the penalty was imposed on him as per the findings in the auditors report and based on the personal hearing on 30/06/2004. Vide letter dated 8th July, 2004, the following documents were submitted to SEBI :
 - a). Authority letters from Sanjay R.Shah & Ravindra D.Shah for using their money(both are his cousins)
 - b). Copy of MOU entered by Pune Stock Exchange Ltd. & Bombay stock exchange Ltd. for trading with Bombay stock exchange
 - c). Auditor's certificate for obtaining client registration forms for clients.
 - That his business on PSE was stopped since November 2001 except that he is doing business as a sub-broker of Pune Stock Exchange and therefore he was not able to get agreements with the clients duly signed.
 - That in respect of other findings, it was done due to lapses.
 - That he had received another letter from PSE along with letter from SEBI dated 27.08.2004 with enquiry report asking the broker why he should not be suspended for a period of 15 days for violation of various rules and regulations. The broker stated that the various violations mentioned in this report are similar to the other report covered under monetary penalty for which he was imposed a penalty of Rs.25,000/-. The broker, therefore, requested not to impose any penalty under the SEBI (Procedure for Holding Enquiry and Imposing Penalties) Regulations, 2002.
 - That he had started business on PSE from July 2001 as sub-broker under SEBI (Stock Broker and Sub-Broker) Rules. The broker had stated that SEBI has undertaken inspection of books as a sub-broker of PSE for the year 2001-2002. The broker had stated that he had received a notice under 4(1) of SEBI from enquiry officer Shri.Sandeep Deore along with report submitted by investigation team. The broker had stated that in this report some lapses have been found as in the report of PSE due to the similarity in the year. The broker had stated that he had already sent his explanation along with other documents on 09.08.2004 addressed to the enquiry officer Shri.Sandeep Deore.
 - That he was also enclosing cheque no.118831 for Rs.25,000/- drawn on UTI Bank Ltd., payable at Mumbai dated 10.09.2004 towards penalty imposed on him under section 15(B) of SEBI Act 1992. The broker further prayed and requested not to impose on him the penalty of suspension of 15 days.

7. I have gone through the inspection report, enquiry report, the show cause notice, the reply of the broker and the material available on record and record my findings as under in respect of each charge :

A. NON MAINTENANCE OF MARGIN DEPOSIT BOOK

The broker in his reply had stated that he had always kept credit balance in client's accounts whose position were outstanding on the stock exchange and that many of such clients were his close relatives and had their verbal or written permission for keeping their credit balance. The broker had however assured that he would keep separate margin account henceforth.

The enquiry officer found that the maintaining of margin deposit book is a mandatory requirement in terms of Regulation 17(1) (k) of SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 and by failing to maintain the said book the broker has violated the provisions of Regulation 17(1)(k) of SEBI (Stock Brokers & Sub Brokers) Regulations, 1992. The explanation offered by the broker is not satisfactory and I agree with the findings of the Enquiry Officer.

B. DEFICIENCIES IN MAINTENANCE OF CLIENTS DATA BASE

The enquiry officer found that the broker failed to obtain KYC forms for some clients and executed the agreements in case of few clients only. The broker had stated in this regard that he had prepared agreements for each client but due to oversight had obtained client agreements after entering into saudas of that client. The broker had stated that he had now entered into agreement with all clients and also obtained "know your client" forms.

The enquiry officer observed that the broker failed to sign client registration form and failed to enter into broker constituent agreement in several cases. The Auditors certificate dated 8.7.04 submitted by the broker regarding obtaining of client registration form and member constituent agreement is perused and it is noticed that in the following cases although client registration forms are obtained, member client agreements were not entered into:

Client Code	Client Name
13082	Shailendra Shah
13085	Rasiklal Shah
13086	Ramanlal Shah
13087	D H Shah
13089	Shaila Shah
13144	Sadhana Shah
13161	Sharmila Shah

To the extent that the member client agreements were not entered into but nevertheless client registration forms were obtained in the aforesaid cases, the broker had violated SEBI Circular no. SMD/Policy/Cir/5-97 dated April 11, 1997. Further, the broker is not in order in obtaining client agreement forms after executing transactions. It is essential that both client registration forms (KYC forms) and member client agreements are entered into prior to execution of transactions. In other cases, where client registration forms were not obtained and member clients agreements were not entered into, the Chartered Accountant had certified that no transactions were executed.

C. OFF THE FLOOR TRANSACTIONS

The enquiry officer found that the broker had executed off the floor transactions in 8 instances involving Rs. 20 crs. Approx. The contention of the broker that he reported these transactions to the exchange is not borne out by evidence. A member is required to report his off the floor transactions to the exchange so that the exchange would have a true and fair assessment of the net worth of a member having regard to the volume and value of the transactions undertaken by him which are not through the screen based trading system of the exchange. This will enable the exchange to gauge the exposure of the member outside the trading system and put in place the necessary risk containment measures. "Off the floor" transactions taking place in the market do not impart transparency and fairness on such deals. The price formation in such transactions are not through the stock exchange price and order matching mechanism and investors do not have benefit of the best possible price. With a view to regulate such off the floor transactions including cross deals, SEBI had issued a circular dated 14/9/1999 which prohibited off the floor transactions and cross deals except on the screen of the stock exchanges which lend transparency and result in true and fair discovery of prices of securities. It is admitted by the member that these transactions were carried out outside the trading system. Having regard to the price and volumes traded, the value of such transactions is very high. These transactions are not in conformity with SEBI Circular dated 14/9/1999 for the aforesaid reasons. For the aforesaid reasons, I agree with the finding of the enquiry officer in this regard.

8. The enquiry officer found that the broker was neither guilty of failure to deliver shares in time, nor for non-segregation of clients' funds. I agree with these findings.

9. It was contended by the member in his letter dated 10.9.2004 that he was already imposed a penalty of Rs.25,000/- based on the inspection report and not to impose further penalty of 15 days in terms of the recommendations of the Enquiry Officer . The issue is examined. The nature, purpose and content of the adjudication proceedings under SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and enquiry proceedings under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 are different. Although, the irregularities that have been referred for adjudication and for enquiry are different, I find that there is one common irregularity which is overlapping i.e. inadequacy in maintenance of client database and non-execution of agreements, deficiencies in client registration forms. Other charges are not common for both adjudication and enquiry proceedings. In view of the single common charge in both the proceedings and taking into account the penalty of Rs.25,000/- imposed by the Adjudicating Officer, it has been decided to reduce the penalty as recommended by the Enquiry Officer in terms of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. I am of the considered view that ends of justice would be met if penalty of suspension of certificate of registration is imposed for a period of 10 days as against the recommendation of 15 days suspension by the Enquiry Officer.

ORDER

10. Having regard to the nature and gravity of the charges established, the submissions made, the facts and circumstances of the case, the recommendations of the Enquiry Officer and for the reasons recorded above, I hereby impose a minor penalty of suspension of the certificate of registration granted to Shri Surendra Rasiklal Shah, Member, Pune Stock Exchange (SEBI Regn. No.INB110250614) for a period of 10 days in terms of Regulation 13(4) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002. Consequently the broker will not trade through PSE Securities Ltd, as a sub broker since his primary membership as a broker of PSE Securities Ltd is under suspension.

This order shall come into force on expiry of 21 days from the date of this order.

G.N.BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Place : Mumbai

Date : 28.12.04