

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST M/s.LOTUS INVESTMENT & SECURITIES, MEMBER - NATIONAL STOCK EXCHANGE, MUMBAI, SEBI REGISTRATION NO. INB230660021 UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002.

1.0 BACK GROUND

- 1.1 M/s Lotus Investment & Securities (hereinafter referred to as the 'broker') is a member of National Stock Exchange (hereinafter referred to as 'NSE') and is registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a Stock broker under Section 12 of SEBI Act, 1992 with Registration Number INB230660021.
- 1.2 An Inspection of the Books of Accounts, Documents and other records maintained by the broker for the financial years 2000-2001 and 2001-2002, was carried out by M/s. Shankarlal Jain & Associates, Chartered Accountants appointed by SEBI vide letter no.SMD/DBA-1/Pre-Insp/AK/14877/2002 dated August 6, 2002. During the inspection, certain irregularities found to have been committed by the broker were observed.

2.0 ENQUIRY PROCEEDINGS

- 2.1 The Inspection Report was forwarded to the broker on completion of inspection. After considering the broker's reply dated April 8, 2003 an Enquiry Officer was appointed vide Order dated December 16, 2003 under Regulation 5(1) of SEBI (Procedure for Holding enquiry by enquiry officer and imposing penalty) Regulations, 2002 (hereinafter referred as the 'said regulations') to enquire into the alleged irregularities committed by the broker which were observed during the inspection.
- 2.2 A Notice dated July 13, 2004 was issued to the broker under Regulation 6 (1) of the said regulations. The broker submitted its reply vide letter dated August 9, 2004 and December 17, 2004 and appeared for a personal hearing on December 17, 2004 before the Enquiry Officer. The enquiry officer conducted the enquiry in terms of the said Regulations and the broker was given a fair and reasonable opportunity to make its submissions. After considering the reply and the submissions made at the time of personal hearing, the Enquiry officer submitted its report dated April 20, 2005 and recommended a minor penalty of 'censure' on the broker.

3.0 SHOW CAUSE NOTICE AND THE BROKER'S SUBMISSIONS

- 3.1 A copy of the Enquiry Report was sent to the broker along with a show cause notice dated April 28, 2005, in terms of Regulation 13(2) of the said Regulations calling upon it to show cause as to why appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on it.

4.0 CONSIDERATION OF ISSUES

- 4.1 I have carefully considered the findings of the Inspection, Enquiry and the submissions made by the broker and note significant points, as under :

4.2 a) Non-collection of margins

With regard to the above allegation, the broker submitted that there had been no defaults in making payments or taking delivery of securities or furnishing securities in the case of sales. It also submitted that adequate margins were collected from the clients and only in some exceptional cases partial margins were collected for which penalty has already been imposed by NSE. The Enquiry Officer observed that there were incidents of margin shortage during the year 2000-2001 and the broker had yet to pay a margin of Rs.8,73,065 for a trade dated March 22, 2001 as observed by NSE. The Enquiry Officer found the explanation of the broker that the margins were retained by way of separate funds / shares /credit balances lying in their ledger not acceptable and the broker guilty.

b) Using of multiple client identification

As regards this charge, the broker submitted that the multiple client identification was used as per the requirement of its back office software which did not support multiple brokerage slabs for the same client code. The broker further submitted that these codes have been allotted prior to the SEBI circular dated July 18, 2001 to this effect and that subsequent to this circular, relevant modifications were made in the back office software and the system of two codes for the same client was stopped in 2001-2002 itself. The Enquiry Officer found that these lapses were technical in nature.

c) Dealing with unregistered sub brokers

With regard to the aforesaid charge and considering the submissions of the broker, the Enquiry Officer noticed that M.A. Investments with whom the broker had entered the client agreement, were acting as sub brokers prior to entering into agreement and later on obtained the certificate of registration from SEBI. The Enquiry Officer also observed that the broker itself stopped its dealings with the said client when it came to know that the said client dealt with some other client and hence found the explanation of the broker acceptable.

d) **Non redressal of investor complaints**

With regard to non redressal of investor complaints, the Enquiry Officer after considering the explanation of the broker did not find any fault with the broker.

- 4.3 On a careful consideration of the above and the submissions made by the broker, I am inclined to agree with the findings of the Enquiry Officer. However, I am of the view that a warning to the broker would suffice and meet the ends of justice.

5.0 ORDER

- 5.1 Now, therefore, in exercise of powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of the said Regulations, I hereby censure M/s. Lotus Investments & Securities, (INB230660021), Member, National Stock Exchange.

- 5.2 This order shall come into force with immediate effect.

Place: Mumbai

Date: 24.1.06

Madhukar

Whole Time Member

Securities and Exchange Board of India