

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: Mr. V.K.CHOPRA, WHOLE TIME MEMBER**

**UNDER SECTION 11(1), SECTION 11(4) (b), AND SECTION 11B OF THE
SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AGAINST
M/S ABHIPRA CAPITAL LTD.**

ORDER

1.0 Background

1.1 M/s Abhipra Capital Ltd., PAN - AABCA 1702F (hereinafter referred to as 'ACL'), is a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at GF – 58 – 59, World Trade Centre, Barakhamba Lane, New Delhi 110 001. ACL is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') in various capacities viz. stock broker, depository participant (DP) and registrar to an issue. SEBI has granted certificates of registration as stock broker (INB010815054) of Bombay Stock Exchange Ltd. (BSE), as stock broker (INB230815053) of National Stock Exchange (NSE), as stock broker (INB200815054) of Over the Counter Exchange of India (OTCEI), as Depository participant (IN-DP-NSDL-22-97) of National Securities Depositories Ltd. (NSDL), as Depository Participant (IN-DP-CDSL-56-2000) of Central Depository Services Ltd. (CDSL) and as a Registrar to an Issue (INR000003829).

1.2 SEBI has been receiving large number of complaints against ACL. SEBI used to take up the complaints with ACL and the respective stock exchanges / depository for redressal of the grievances of the investors, as and when received. The large number of complaints received against ACL indicates that

ACL has been indulging in undesirable practices in the conduct of its business apparently in contravention of SEBI Act, Rules and Regulation. ACL has not been taking necessary steps to redress the grievance of its clients. ACL did not co-operate with SEBI in providing information and on the other hand employed delaying tactics to suppress information. Two of the instances of investor complaints received against ACL are given in detail in the following paragraphs:

1.3 SEBI has received complaints from Shri Brijesh Johari and Smt. Roma Johari (hereinafter referred to as the 'Johari's' or 'complainants') in the year 2003-04 against ACL. The major allegations against the ACL were as under:

- i) Johari's were dealing with ACL from their Gwalior branch. On December 30, 1999, Johari's instructed ACL to sell 244 shares of ACC @ Rs. 240 per share and 205 shares @ Rs. 240 per share. Accordingly the shares were sold in the market. ACL issued two cheques for Rs. 57974.40 and 48708.00 respectively towards the sale proceeds. When Johari's presented the cheques for payment the same were dishonoured.
- ii) Later, when Johari's demanded payment of the sale proceeds (in lieu of the dishonoured cheques) ACL induced Johari's to buy certain shares instead of making the payment. ACL suggested purchasing shares of Engineers India Ltd. (EIL), Mangalore Refinery & Petrochemicals Ltd. (MRPL) and Steel Authority of India Ltd. (SAIL). ACL advised that the purchase price of these shares would be adjusted and set off against their dues pertaining to the sale proceeds of ACC shares. Relying upon the assurance of ACL, Johari's instructed ACL to purchase the shares of aforementioned three companies. ACL informed Johari's that 560 shares of EIL, 4000 shares of MPRL and 3000 shares of SAIL were purchased and the shares were credited to Johari's demat accounts maintained with ACL. However, Johari's found from their account statements received by them later that the shares were not credited into their account.

- iii) ACL had circulated a letter dated November 27, 2000 to all their clients stating that their Gwalior branch was being converted into a franchisee with M/s. Tag Finvest Pvt. Ltd. (TFPL) with effect from December 6, 2000. ACL had advised all their clients to clear the dues and settle the accounts or continue trading with their franchisee. Johari's vide their letter dated December 8, 2000 replied the ACL that they will continue to be trading with their franchisee, if the arrangement had SEBI's approval.
- iv) Johari's had a credit balance of Rs. 11852.53 with ACL as on December 05, 2000. ACL transferred the balance amount to the account of TFPL without any mandate from Johari's to do so.
- v) During the period from 2000 to 2002 Johari's had sold shares of 21 scrips through TFPL. Since TFPL was maintaining running accounts for their clients Johari's sale proceeds were retained by them. Johari's used the amount for purchase of various shares. Johari's purchased shares of 29 scrips (details of scrip and quantity are mentioned in Annexure 'A') from the amount so retained by TFPL. Johari's made additional payment of approximately Rs. 8.30 lakhs by Account payee cheques in the name of TFPL against contract notes issued for the purchase of the said shares. Neither ACL nor TFPL delivered the shares of the 29 companies to Johari's.

1.4 On receipt of the complaints of Johari's, SEBI had asked ACL to redress the grievances. ACL instead of redressing the grievances adopted delaying tactics. SEBI has written number of letters in this regard viz. letters dated February 12, 2004, August 29, 2005, September 14, 2005, July 03, 2006, July 24, 2006, August 21, 2006 and so on. ACL did respond to the letters of SEBI but avoided replying to the specific issues raised. While replying to the letters ACL raised various frivolous contentions to circumvent / delay redressal of the grievances. Under the above circumstances, a team of officials from the North Regional Office of SEBI (hereinafter referred to as 'NRO') conducted

an inquiry in to the affairs of ACL with regard to Johari's complaint in the month of March 2007.

1.5 SEBI had received another complaint dated November 19, 2005 from M/s Reena Associates (Shri Deepak Gupta), a client of ACL. Shri Deepak Gupta used to trade in Future and Options (F&O) segment of NSE. Shri Deepak Gupta alleged that ACL indulged in manipulation of huge amount in his account and has also misappropriated his funds. ACL misappropriated the credit balance as well as margin deposit account of Shri Deepak Gupta by raising fraudulent and fictitious debit entry of Rs.1,53,00,915/- on October 28, 2005. SEBI vide letter dated 13.12.2005 had advised NSE to investigate into the allegations made against the ACL.

1.6 SEBI has received more than 15 other complaints against ACL from their various clients such as Sri Pandurang Vinayak Naik, Mr. Vijay Kumar Sharma, Mr. B L Agarwal etc.

1.7 Recently two directors of ACL were arrested by Delhi Police for their alleged involvement in 'Dabba' Trading effectuated in the commodity market. It is informed that the matter is under investigation by Economic Offence Wing, Delhi Police. Consequent to this development, the trading terminals of ACL were also suspended by both BSE and NSE for a week (May 24-30, 2007).

2.0 Findings of the inquiry/ factual verification conducted by NRO in the matter of Johari's

2.1. Johari's were clients of ACL and traded through ACL's branch office at Gwalior till December 6, 2000. Thereafter, pursuant to an agreement entered into between ACL and TFPL, Johari's traded through TFPL till September 2003. TFPL was registered as ACL's sub-broker on October 6, 2003. As per the complainants' allegations, TFPL closed its office on October 7, 2003 and has not been active since.

2.2. Johari's alleged that they have sold 449 ACC shares through ACL on December 30, 1999 for which sale proceeds were not received by them. The following table summarizes the details of these transactions:

S.No.	Date of the Transaction	No. of ACC shares sold	Rate per share (Rs.)	Amount (Rs.)
1.	December 30, 1999	205	240	48,708.00/-
2.	December 30, 1999	244	240	57,974.40/-
	TOTAL	449		1,06,682.40/-

2.3. Two Delivery Instruction Slips (DIS) submitted by the complainants which were also available on record with ACL, confirm the delivery of 449 ACC shares to ACL (CM-BP-ID – In 550161) on December 30, 1999 for settlement no. 9951. The transaction statement of Roma Johari's demat account no. 10077106 shows transfers of 160 and 45 ACC shares to ACL (as Clearing Member) on January 4, 2000. Similarly, the transaction statement of BC Johari and Roma Johari's demat account no. 10077114 shows transfer of 190 and 54 ACC shares to ACL on January 4, 2000.

2.4. The ledger account of Roma Johari for the period April 1, 1999 to March 31, 2001 submitted by ACL to NSE vide letter dated April 21, 2005 does not reflect receipt of any payments for the sale of these ACC shares. Further vide

the same letter ACL has categorically denied that B C Johari had a trading account with them during the period December 6, 1999 to December 6, 2000.

- 2.5. ACL was requested to produce bank books, ledger accounts and cash books in order to enable verification of the complainants' claims regarding bouncing of cheques (for amounts of Rs.57,974.40/- and Rs.48,708.00/-) issued to them by ACL towards payment of sale proceeds for 449 ACC shares. However, during the visit to ACL's office, Shri V D Aggarwal (Chairman, ACL) refused to produce the said records on the grounds that these were very old. This stand has been subsequently reiterated by ACL in its letter dated March 27, 2007 wherein besides claiming that the records are "too old and bulky" and that the "version of software has changed frequently"; SEBI has been requested to "specify the dates which may be relevant to the complainants". Considering that the matter has been pending for some years now, no argument can be accepted as an issue for non-production of these records.
- 2.6. At a meeting held with Shri V D Aggarwal on March 16, 2007, SEBI officials were informed that he was planning to contact the complainants and settle the matter with respect to any unpaid dues by ACL.
- 2.7. Thereafter, NRO received a letter dated May 3, 2007 from Shri Vikram Johari on behalf of his parents (the complainants) wherein he has stated that they had been contacted by certain persons for the settlement of 'dues' of the complainants (amounting to a lower sum than the complainants are now claiming) but that the phone calls were intimidating and amounted to pressure tactics by ACL.
- 2.8. The complainants alleged that Branch Manager of ACL, Gwalior, Shri Garg had promised Johari's shares of EIL, MRPL and SAIL in lieu of the sale proceeds of ACC shares. He subsequently, informed Johari's that 560 shares of EIL (@ Rs.109/- each), 4000 shares of MRPL (@ Rs.7.30/- each) and 3000 shares of SAIL (@ Rs.5.10 each) were purchased and transferred to

their demat accounts with ACL - Delhi. The transaction statements for four demat accounts held by the complainants were obtained from ACL. Perusal of these statements did not reflect any transfer of the aforesaid quantities of the shares of EIL, MRPL and SAIL from ACL's account to the account of Johari's.

2.9. From the foregoing it appears that ACL has neither paid the sale proceeds of 449 ACC shares to the complainants, nor delivered any scrips in lieu of the same.

2.10. The nature of relationship between ACL and TFPL, specifically whether the latter was operating as ACL's unregistered sub-broker till October 6, 2003 was looked into. The following clauses of the so called 'Client Agreement' (dated December 6, 2000) entered into between ACL and TFPL are clearly indicative of the fact that TFPL was in fact operating as an unregistered sub-broker of ACL at Gwalior:

i) *"Whereas Abhipra has trading facilities of National Stock Exchange (NSE), Bombay Stock exchange (BSE) and Delhi Stock Exchange (DSE) and is desirous of appointing client to operate terminals"....*" *Whereas M/s Tag Finvest (P) Ltd. (hereinafter referred to as "the client") has approached Abhipra with a request for being appointed a client, and....."*

ii) *"Article 1(c) – "Terminal" means the NSE/ BSE/ DSE Trading terminal installed in the name of Abhipra and being operated by the client at LS-7, Moti Palace, Gwalior."*

The aforesaid clauses clearly indicate that it was intended that TFPL continued to operate ACL's trading terminals at Gwalior.

iii) *"Article 3 – The client shall pay to Abhipra the whole of the cost of setting up the required trading terminal of NSE through V-SAT connectivity at the designated place and will pay Rs.3,25,000/- (Rupees three lacs twenty five thousand only) for NSE V-SAT and Rs.11,500/- (Rupees eleven thousand five hundred only) per month for BSE V-SAT."*

The maintenance charges of NSE V-SAT as charged by NSE will be paid by the client annually. Further, the client will itself procure, equip, install and maintain at its office all necessary infrastructure facilities e.g. computers, air conditioners, UPS, telephone, fax machine etc. as may be advised by Abhipra. The office shall have proper furniture and fixtures and qualified and competent staff in sufficient numbers to carry on the operations.”

From the aforesaid clauses it is clear that Abhipra continued to have a say in TFPL’s operations and setup. In case the relationship between ACL and TFPL was merely that of a broker and client, ACL would have had no occasion to go into minute details regarding the setup, staff and infrastructure required to be maintained by TFPL.

- iv) “Article 5.6 – Abhipra shall accept all deliveries from client’s account only and likewise shall release the payout to client’s account.”*
- v) “Article 5.7 – All the liabilities and recoveries of the Gwalior Branch of Abhipra Capital Ltd. till the 5th of December 2000 will be honoured and met by Abhipra Capital Ltd., thereafter i.e. from 6th of December 2000 and onwards will be honoured and met by the franchisee M/s Tag Finvest (P) Ltd.....”*

In the event TFPL was to operate only as ACL’s client, the necessity of putting the aforesaid clauses in place would not have arisen. Thus it is apparent that TFPL was to continue ACL’s broking operations at Gwalior as an unregistered intermediary.

- vi) “Article 7.1 – Apart from working as a client with license to operate the terminal at Gwalior, the client may provide services to investors by offering and extending the services of Abhipra as depository participant to the investors”*

From the said clause it appears that TFPL’s primary function at Gwalior was to operate ACL’s trading terminal and that the DP operations were only incidental in nature.

vii) *“Article 8.1- As consideration for license to operate the terminal the client shall pay*

viii) *ay to Abhipra fees at the following rates:.....*

.....

(d) The transaction charges in your demat account shall be charged as:

buying – 1 paisa

selling 3 paise (i.e. one paise over and above the depository charges subject to the condition that all the deliveries delivered to your client account shall be transferred to respective investors within 7 days from the release of payout by us to you failing which the usual transaction charges shall be charged from the franchisee as mentioned in the account opening form.)”

This clause is clearly indicative of the fact that TFPL continued dealing with the investors on behalf of ACL. In case this clause of the agreement was intended only for the DP services to be provided by TFPL, there would be no question of providing for the ‘deliveries’ being ‘transferred to the respective investors within 7 days’ pursuant to the ‘release of payout’ by ACL.

ix) *“Article 8.1- As consideration for license to operate the terminal the client shall pay to Abhipra fees at the following rates:.....*

.....

(e) SEBI turnover fees will be levied as per the decision of the Supreme Court with retrospective effect.”

As on date there is no provision for charging turnover fees to clients. Hence, the aforesaid provision wherein TFPL is required to bear the turnover fees clearly implies that it was to trade not only for itself but also for other investors in the capacity of ACL’s unregistered sub-broker.

x) *“Article 9 – It shall be the duty of Abhipra to:*

Cause the trading terminal to be installed at Gwalior at the premises specified by the client.

To provide and upgrade the software required for operations by the client at the terminal”

From the aforesaid clauses it is clear that the software used by TFPL for trading, generating contract notes etc. was arranged for by ACL. Hence ACL’s contention that it was ignorant of TFPL’s activities is incorrect.

2.11. During an inspection of ACL’s operations conducted by NSE in November 2002, it was observed that at the time of order entry different client codes were being entered into the system by ACL even though the contract notes were issued to the same entity – TFPL. The extract of NSE’s Inspection Report as available on record with SEBI states that “unregistered intermediaries were observed with whom trading member dealt in broker – sub-broker relationship for transactions on the Exchange”. NSE had identified six such entities one of them being TFPL. For this violation, NSE levied a fine of Rs.One lakh on ACL.

2.12. In this regard, it would be relevant to also refer to SEBI circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001 wherein it has been stated that:

“It has further come to the notice of SEBI that the trading terminals granted to the stockbrokers at various locations are being mis-utilised for unregistered sub-broking activities. In view of the above, Exchanges are advised to grant trading terminals only at the members’ registered office, branch offices and their registered sub-brokers’ offices. Trading terminals granted earlier in places other than mentioned above should be withdrawn immediately. The Stock Exchanges shall amend their bye-laws accordingly to take action against the broker who mis-utilises or lets misutilisation of their trading terminals for unregistered sub-broking activities.”

- 2.13. Vide letter dated November 27, 2000 on the subject of “Transfer of Management” of their Gwalior Branch, ACL informed its investors that its Gwalior Branch was being converted into a Franchise with TFPL with effect from December 6, 2000 and that the clients were advised to clear their dues and settle their accounts with ACL at the earliest. In response to this letter one of the complainants – Roma Johari, vide letter dated December 8, 2000 requested ACL to clear their outstanding credit balance and stated that in case the changed arrangement had SEBI approval they would like to continue scrip trading with the new arrangement. NRO could not find any proof of a reply having been sent by ACL to the complainants’ letter.
- 2.14. However, from Roma Johari’s ledger account submitted by ACL, it is observed that an outstanding amount of Rs.11,852.53/- payable to Roma Johari was transferred by ACL to TFPL on December 6, 2000 itself i.e. without receiving any communication/ approval from the complainants. On being queried on this aspect, Shri V D Aggarwal told SEBI officials that the said amount was transferred to TFPL on the complainants’ specific instructions. However, he could not produce any evidence in this regard.
- 2.15. It may be pertinent to note that Roma Johari had expressed her willingness to continue trading through ACL’s new arrangement only if it had SEBI approval. Transferring funds to TFPL before receiving approval from the complainants and choosing to remain silent to the complainants’ query regarding SEBI approval, not only tantamount to misrepresentation on ACL’s part but also indicates a tacit admission of its illegal trading arrangement with TFPL.
- 2.16. In one of the correspondences (dated June 19, 2004) available on record with SEBI, ACL has stated that no payments were made by Roma Johari against the shares claimed to have been purchased by her and that she had not made any delivery of the shares sold by her. Details of 11 such scrips

sold (along with the settlement numbers) where no delivery has been allegedly made either to TFPL or ACL have been enclosed with the said letter. In the event TFPL was only ACL's client and ACL had no dealings with the complainants after December 6, 2000, the question of deliveries being executed by the complainants in favour of TFPL or ACL does not arise. The fact that ACL has made this statement tantamount to admission of its trading arrangement with TFPL.

2.17. Interestingly, the settlement numbers and details pertaining to the sale of 11 scrips as indicated by ACL in the aforesaid letter tallied with those in the contract notes apparently issued by TFPL to the complainants. The fact that ACL could quote the exact settlement numbers and trade details pertaining to the complainants' transactions confirms that ACL was not only fully aware of, but also facilitated the complainants' transactions through TFPL.

2.18. Further, on a perusal of the Client Master List pertaining to ACL's DP accounts it was observed that there is a demat account (no. 10560041) in the name of Abhipra Capital Ltd. where the first line of the address reads 'C/o Tag Finvest (P) Ltd.'. However, the remaining address is that of ACL's Corporate Office at Azadpur, Delhi. The transaction statement of TFPL's demat account (no. 10529403) provided by ACL reveals that several off market deliveries from the said ACL demat account have been made into TFPL's account from 2001 till 2003.

2.19. Similarly there is another demat account (no. 10482353) in the name of Abhipra Capital Ltd. where the first line of the address reads 'C/o Gwl. Branch'. However, the remaining address is that of ACL's Corporate Office at Azadpur, Delhi. The transaction statement of the complainants' demat account (no. 10093945) provided by ACL shows the following off market deliveries received from the said ACL account in 2001 and 2002:

? HCL Infosystems on March 5, 2002

? Sonata Software on October 15, 2001

? Sri Adhikari Brothers on October 15, 2001

These deliveries belie ACL's contention that they had dealt with the complainants only till December 6, 2000 and not thereafter. Further, during the period 2000 till 2002 several off market deliveries have been made from this account (of ACL) into the accounts of TFPL (no. 10529403) and one of its directors - Shri Rajesh Kumar Bhalla (no. 10517732).

- 2.20. Further, there is yet another demat account (no. 10074052), in the name of 'Abhipra Capital Ltd., Gwalior Branch' from which numerous off market deliveries have been made into TFPL's account (no. 10529403) in the years 2000 and 2001.
- 2.21. On a perusal of the transaction statements of the demat accounts of TFPL and its director – Shri Rajesh Kumar Bhalla, a distinct pattern was observed - pursuant to the receipt of off-market deliveries from the aforesaid ACL demat accounts, the shares were transferred (again as off-market deliveries) into different demat accounts including those of the complainants.
- 2.22. Moreover, contrary to the contentions of Shri V D Aggarwal (Chairman, ACL) it is observed from the transaction statement of TFPL's demat account that several shares were sold by TFPL through ACL in 2004.
- 2.23. In view of the above, it appears that during the period of its operation and till the date of its closure, TFPL was operating as ACL's unregistered sub-broker and that ACL had full knowledge of and even facilitated TFPL's operations. Subsequent to the alleged closure of TFPL's office at Gwalior and despite knowing that several dues to investors remained unpaid, ACL was instrumental in allowing TFPL to access the market and dispose off its holdings.
- 2.24. From the various documents available on record (specifically the DIS, contract notes, transaction statements of the complainants' and TFPL's

demat accounts as well as ACL's agreement with TFPL it appears that the modus operandi of TFPL's (and ACL's) Gwalior operations was as follows:

- ? Investors communicated their trading instructions/ orders to TFPL.
- ? Orders were entered into NSE's system through ACL's VSAT by TFPL.
- ? Contract notes were issued by ACL to TFPL for the trades. TFPL in turn issued individual contract notes to the respective investors by using software provided by ACL.
- ? For the purpose of executing deliveries of shares, investors were informed that demat accounts of TFPL and its directors were Pool accounts. Investors were required to transfer shares into these demat accounts by way of off-market transactions. Once TFPL received the investors' shares in its demat accounts, the same were transferred either as market deliveries into ACL's pool account or as off market deliveries into other designated demat accounts in the name of ACL. Payouts were made by ACL into TFPL's account which in turn transferred the funds into the accounts of the individual investors.
- ? For the purpose of executing delivery of funds, investors were required to transfer the funds into TFPL's accounts. Once TFPL received the money, it was transferred to ACL. Corresponding deliveries of shares were made by ACL into the demat accounts of TFPL and its director(s) either as market deliveries or off-market deliveries. The shares were in turn transferred to the demat accounts of the individual investors.

2.25. The complainants alleged that during the years 2000 to 2002 they had sold 21 scrips through TFPL. Sales proceeds of these 21 scrips were retained by TFPL and were used to buy other scrips by the complainants. Thereafter, the scrips so purchased were sold by the complainants in the year 2003, and 29 other scrips were purchased in lieu thereof. The complainants also claim to have made certain additional payments through cheques to TFPL

for their purchase obligations of the 29 scrips.

- 2.26. In this regard, out of 21 scrips, the transaction statements of the complainants' demat accounts and the DIS provided by ACL confirm transfer of the stated quantities of 20 scrips from the complainants' accounts into TFPL's / its director's account. However, in one case - Finolex Industries Ltd., though the quantity stated to have been sold is 125 shares (from complainants' account no. 10077114), the actual quantity reflected in the transaction statement is 175 shares.
- 2.27. As regards, the remaining amount stated to have been paid through cheques, the complainants submitted certificates from their bankers regarding the encashment of cheques totaling an amount of Rs.3,62,635.00/- (approximately) in favour of TFPL.
- 2.28. The purchases of the 29 scrips and the sale of certain scrips against which these purchases were squared off, are supported by copies of contract notes, bills and ledger account issued in favour of the complainants by TFPL. The transaction statements of the complainants' demat accounts do not reflect the deliveries of the stated quantities of any of these 29 scrips.
- 2.29. Thus it appears that the complainants' allegation regarding non-receipt of 29 scrips is correct. Further, in view of the fact that TFPL was operating as ACL's unregistered sub-broker and the disputed transactions were facilitated and carried out on ACL's V-SAT terminal, ACL cannot disclaim liability on grounds of being an unrelated party to the transactions.
- 2.30. From the transaction statements pertaining to the demat accounts of TFPL and its director – Shri Rajesh Kumar Bhalla it is observed that most of the deliveries made to ACL by TFPL and vice versa were off-market in nature. Moreover, despite being specifically requested for copies of the contract notes issued to TFPL. Client ledgers and books of accounts pertaining to the period, ACL has time and again expressed its inability in supplying the same. In fact, by seeking the specific dates of the transactions 'relevant to

the complainants' from SEBI at this stage, Shri V D Aggarwal has clearly employed delaying tactics. The specific period for which the details were required was conveyed in unambiguous terms to ACL during the visits by SEBI officials and also vide our letter dated March 14, 2007. During one of the visits made by the SEBI officials to ACL's office, ACL was advised to provide access to the electronic trade data pertaining to 2003 to enable verification of the complainants' transactions. However, ACL refused to do so, on the ground that since the data was old and the software versions had changed, the same could not be loaded on the existing systems.

3.0 Findings of NSE inspection in the matter of Shri Deepak Gupta

3. 1 In the matter of complaint filed by Shri Deepak Gupta, SEBI vide letter dated 13.12.2005 had advised NSE to investigate into the allegations made against the ACL. NSE vide its letter dated 21.06.2007 informed SEBI that it has carried out an inspection of books and accounts of ACL in the month of May 2007 and forwarded a copy of the inspection report along with an analysis of the submissions made by ACL.
3. 2 During the settlements selected for inspection NSE observed that trades executed for a constituent were subsequently transferred to another constituent. This is not in accordance with Regulation 3.5.1 of the Capital Market Regulations of the exchange. The instances of client code modification include modification of the trade executed on behalf of Shri Deepak Gupta.
3. 3 ACL had allotted multiple codes to many of their constituents. In a scrutiny of sample selected ten clients had multiple client codes. This is not in accordance with circular no. NSE/INVG/2002/3690 dated October 18, 2002.
3. 4 The initial margin amounts actually collected from the clients were compared with the figures declared by the member in the margin file submitted to the exchange for 12 days randomly selected. This was after considering the ledger balances, cash deposits and securities of the

concerned entities. NSE observed that the trading member has wrongly reported Margin Collection to the exchange on all the days examined. This is in contravention of NSE circular no. NSCC/F&O/C&S/97 dated February 01, 2002. On various dates the margin collected from Shri Deepak Gupta was also wrongly reported.

3. 5 ACL effected transfer entries from Capital Market Financial Ledgers of the clients to their F&O ledgers even when adequate balances were not available or when the accounts were already running in debit. NSE found that in case of 20 out of 50 instances, ACL has failed to provide any proper explanations and details of the securities held. Further, in eight other instances the amount of securities provided is less than the amount transferred from Capital Market Financial Ledgers of the clients to their F&O ledgers.
3. 6 ACL has indulged in cash dealings with its clients. This is not in accordance with NSE circular no. NSE/INSP/4377 dated September 01, 2003. During the period considered for inspection ACL received cash amounting to Rs. 22.91 lakhs from clients and made payment of Rs.5 lakhs.

4.0 Consideration of Issues

4. 1 I have taken into consideration the submissions made by the complainants, supporting documents enclosed therewith, various letters issued to ACL by SEBI and their reply, findings of the inquiry conducted by SEBI-NRO and letters of NSE dated 05.04.2005, 07.11.2005, 03.07.2006, 21..07.2007 etc.
4. 2 From perusal of the aforementioned documents and findings, I have no doubt that the manner in which ACL has conducted itself in the matter of Johari's and others is far from being satisfactory. ACL not only allowed misuse of its VSAT terminal but also facilitated TFPL's operations as its unregistered sub broker in violation of SEBI Rules and Regulations. Further, from the ACL letter dated November 27, 2000 it is also evident that ACL had converted its Gwalior branch as a franchisee in the hands of TFPL, who had acted as a non-registered sub-broker of the ACL.

- 4.3 A plain reading of the terms and conditions of the agreement dated December 6, 2000 also makes their relationship crystal clear. However, in particular, as per Article 5.7 of the agreement all the liabilities and recoveries of the Gwalior branch of ACL till December 05 was to be honoured and met by ACL while from December 6, 2000 and onwards was to be honoured and met by the franchisee TFPL. If TFPL had to operate only as a client, there had been no need for demarcation of liabilities and recoveries between ACL and TFPL. It is also on record that NSE had imposed penalty of Rs. One lakh upon the ACL, as ACL was dealing through unregistered sub-brokers / entities.
- 4.4 In view of these findings, the contentions of the ACL that they had no privity of contract with the complainants nor they had transacted through them are untenable, as TFPL was acting on behalf of the ACL. Here it may be noted that in terms of Regulation 26 of the SEBI (Stock Brokers & Sub Brokers Regulations), 1992, (hereinafter referred to as 'Stock Brokers Regulations') a broker shall not deal with unregistered sub-brokers.
- 4.5 In this regard it would be relevant to refer to SEBI circular no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001 wherein it has been stated that:

“It has further come to the notice of SEBI that the trading terminals granted to the stockbrokers at various locations are being mis-utilised for unregistered sub-broking activities. In view of the above, Exchanges are advised to grant trading terminals only at the members’ registered office, branch offices and their registered sub-brokers’ offices. Trading terminals granted earlier in places other than mentioned above should be withdrawn immediately. The Stock Exchanges shall amend their bye-laws accordingly to take action against the broker who mis-utilises or lets misutilisation of their trading terminals for unregistered sub-broking activities.”

- 4.6 Thus clearly the operation of a VSAT terminal at Gwalior by ACL through

TFPL from December 2000 onwards was illegal since it was at a location which was not its registered office, branch office or the office of its registered sub-broker. Dealing with unregistered sub-brokers was identified as a lapse and was specifically brought to the notice of all the exchanges vide circular no. SMD/MDP/CIR/043/96 dated August 5, 1996 with a warning that serious view would be taken if such deficiencies were observed during the course of future inspections of the brokers by SEBI.

4. 7 In view of the observations in the preceding paragraphs, it appears that ACL has not made payments to the complainants for the sale of 449 shares of ACC executed on December 30, 1999. As regards the disputed transactions related to the purchase of 29 scrips, it is a fact that these transactions were executed through ACL's VSAT terminal; ACL cannot disclaim liability on account of ignorance or being an unrelated third party to the transactions. The degree of ACL's liability can also be gauged from the fact that they facilitated trading by TFPL even in the year 2004 despite knowing that the entity had shut shop and had many investor claims pending against it.
4. 8 The above acts of ACL are in direct contravention of the Code of Conduct, as specified under schedule II of the Stock Brokers Regulations which requires a broker to maintain high standards of integrity, promptitude and fairness in the conduct of all his business. Further, as a duty to investor, para B of schedule II of the SEBI Broker Regulations requires that the broker shall promptly inform his client about the execution or non-execution of the order, and make prompt payment in respect of securities sold and arrange to prompt delivery of security purchased by clients.

4. 9 I note that SEBI vide its circular dated November 18, 1993 has instructed that brokers shall make payment to their clients or deliver the security purchased within two working days of pay-out. Regulation 7 of the stock brokers regulations require a stock broker holding certificate of registration to abide by the code of conduct as specified in schedule II. From the foregoing it is crystal clear that the ACL, by the manner of his dealing with his clients/ complainants, has contravened the stock brokers regulations as well as circulars issued there under.
4. 10 It appears that the member (ACL) has not only caused delay and avoided the redressal of grievances of his clients/ complainants but has also not co-operated with the SEBI Officials while they were conducting inquiry by not providing several documents relevant to the allegations made by the complainants. I note that in terms of SEBI (Stock brokers & Sub-brokers) Rules, 1992, (which was in force in the relevant period of allegations, however, repealed in year 2006 with effect from September 7, 2006, as a condition precedent for registration) stock broker was required to take all adequate steps for redressal of grievances of the investors within one month of the date of receipt of the complainant.
4. 11 Further, the code of conduct, as contained in DP regulations, requires the participant to take all endeavour to resolve all the complaints against it or in respect of the activities carried out by it as quickly as possible as and not later than one month from the date of receipt. . It would be needless to say that the above requirements have not been complied with by the ACL. By not providing the documents required by SEBI officials, during inquiry, the ACL has also contravened the para 10 of the code of conduct of the DP regulations which requires a participant to co-operate with the Board as and when required.

4. 12 In the matter of Shri Deepak Gupta also ACL has been found to have committed several irregularities/violations as stated in para 3.2 to 3.6 above.
4. 13 I further note that two directors of ACL namely Shri V. D. Agarwal and Shri Abhinav Agrawal were recently arrested by EOW of Delhi Police for their alleged involvement in Dabba Trading in commodity market and bogus commodity transactions. I note that subsequently bail was granted by Court of Shri Kanwaljeet Arora, CMM, Tis Hazari Court, Delhi. The above fact raises a serious concern about the manner of ACL's dealings and conduct, as the mode of transactions in securities/ derivatives market and commodities market are similar. This may also be seen from the fact that upon these allegations against the ACL, as a risk containment measure and abundant precaution, their trading terminals were also suspended by BSE and NSE for a week (May 24-30, 2007). The above also raises serious concern on Fit and Proper requirement for ACL acting in various capacities in the capital market.
4. 14 I note that SEBI vide its order dated 13.08.2007 has appointed Mr. Sura Reddy to conduct an enquiry, against the ACL upon the allegations made by its clients against it, in terms section 12 (3) of the SEBI Act and of the SEBI (Procedure of Holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations'). The said enquiry proceeding is pending.
4. 15 Under the facts and circumstances of the case, as stated above, it becomes incumbent upon the regulator to take emergent and remedial steps for safeguard of the interests of the investors and to maintain safety and integrity of the securities market pending enquiry. While Enquiry Proceedings would be completed against the ACL in due course of time, it is felt that pending such enquiry, ACL should not be allowed to open new trading account and DP accounts in view of the prima facie findings, as

mentioned above.

4. 16 Securities Appellate Tribunal (SAT) in the matter of M/s. Bhorka Financial Services Ltd. vs. SEBI, SAT Appeal No. 18/2006. The Hon'ble SAT vide its order dated May 10, 2006 observed that Board while exercising its functions under the SEBI Act with a view to protect the interest of investors and also to protect the integrity of the market and without prejudice to the provisions of sub-sections (1), (2A) & (3) of section 11 and 11B can by an order, for reasons to be recorded in writing, take any of the measures referred to in sub-section (4) of section 11 and those measures can be taken either pending investigations or enquiry or on completion of such investigation or enquiry.
4. 17 In the matter of M/s Karvy Stock Broking Ltd. vs. SEBI also wherein M/s Karvy had challenged the interim order passed by SEBI dated May 26, 2006 directing the appellant not to act as a depository participant pending enquiry and passing of final orders except for acting on the instructions of existing beneficial owners, the Hon'ble Securities Appellate Tribunal in its order dated January 8, 2007, has observed as follows: *"..we hold that the word 'inquiry' used in section 11(4) refers to the inquiries held under section 11, 11B, and also to the enquiry under the inquiry regulations framed under section 12 (3) and also to the inquiry held under chapter VIA and it is during the pendency of any of these inquiries that an interim order could be passed with a view to protect the interest of investors or in the interest of the market."*

5.0 ORDER

5.1 In exercise of the powers conferred upon me under section 11(1), section 11(4) (d) read with section 11B and section 19 of the SEBI Act, in order to prevent the affairs of Abhipra Capital Ltd. in a manner detrimental to the interests of the investors and to maintain the safety and integrity of the market, in any manner whatsoever, pending completion of Enquiry Proceedings, it is directed that:

- i) The ACL shall not open any new “Trading as well as DP accounts” and shall not undertake any new agreement as RTI/RTA till completion of the pending Enquiry Proceedings and passing of the final order by SEBI upon the recommendations of the Enquiry Officer.
- ii) As it is evident from the findings of the inquiry that sales proceeds of 449 shares of ACC and also the sales proceed of shares of 29 companies were not paid to the complainant, NSE is advised to deduct the amount equivalent to the current market price of the above mentioned shares from the deposits of the ACL and retain the same in a separate account till the full and final settlement of the matter.
- iii) The Enquiry Officer appointed by Board shall ensure the speedy completion of the enquiry proceedings and submit the Enquiry Report with its recommendations to the Board at the earliest. The Board after receiving of the Enquiry Report shall take all measure to pass its final order as early as possible. ACL is also directed to co-operate with the concerned authorities for early completion of the enquiry proceedings.

6.0 HEARING TO ACL

- 6.1. I am of the considered view that due to imminent urgency and in order to safeguard the integrity of the securities market, the issuance of notice to show cause can be dispensed with and it will be in the interest of justice to pass an ex-parte order, as above. If ACL feels aggrieved by this interim ex-parte order, it may approach SEBI within 30 days of this order showing cause as to why the directions passed in this order should not be continued till the completion of pending Enquiry Proceedings and passing of the final order thereon. For this purpose, this order may be treated as show cause notice (SCN) and ACL may also avail opportunity of inspection of preliminary inquiry report, letters of complainants, letters of NSE and other documents, if any, relying upon which this order is being passed. Where ACL files its submission for reconsideration of the directions passed by this order, a date shall be fixed for giving the ACL an opportunity of being heard within 30 days after filing of their submissions. However, in case the ACL fails to file any submission for reconsideration of the directions passed by this order, the order/ directions as contained in para 5.0, shall continue till completion of the Enquiry Proceedings and passing of the final order thereon.
- 6.2. It is further made clear that if the ACL gives submissions for reconsideration of the directions, the Board after consideration of the submissions in their reply or in oral hearing and other records, shall pass such order as deemed appropriate. The Enquiry Officer so appointed shall proceed with its proceedings and make recommendations on its own merits without being influenced in any manner by the observations made in this order.

6.3. The directions given in this order, as contained in para 5.0, will come into force with immediate effect.

-sd-

PLACE: MUMBAI

V.K.CHOPRA

DATE : 17.08.2007

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Annexure 'A'

List of the 29 scrips which were purchased by the ACL for complainant's (Johri's) but not delivered to them:

1. Karur Vysya Bank (47 nos.)
2. Prism Cement (1000 nos.)
3. Rama News Print (1000 nos)
4. Visual Software (100 nos)
5. Orchid Chem (100 nos)
6. Nagarjun Fertilizers (1000 nos)
7. NFL(700 nos)
8. Agro Dutch Ex Bonus + Right (1000 nos.)
9. IFCI (500 nos.)
10. GAIL (100 nos.)
11. Nippon Denr (500 nos.)
12. Nippon Denr(500 nos.)
13. Gujarat SID Cement (1000 nos.)
14. IFCI (500 nos.)
15. Morpen Lab (500 nos.)
16. MRPL (500 nos.)
17. Rama News Print (500 nos.)
18. SAIL (500 nos.)
19. Arbind Remedies (1000 nos.)
20. Andhra Papers (600 nos.)
21. GAIL (300 nos.)
22. Tata Telecom (Avaya Global, 100 nos.)
23. IT & T [Merged + I-Gate, 300 nos.)
24. Satnam Oversease (100 nos.)
25. Madras Fertilizers (300 nos.)

26. GAIL (400 nos.)

27. Engg India Ltd (200 nos.)

28. Karur Vysya Bank (1000 nos.)

29. Karnatka Bank(Ex Bonus+ Right, 450 nos.)
