

SECURITIES AND EXCHANGE BOARD OF INDIA**CORAM: SHRI G. ANANTHARAMAN, WHOLE TIME MEMBER****ORDER AGAINST M/S MERBANC BSNV SECURITEIS LTD., SUB BROKER UNDER REGULATION 13(4) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002**

1.1 M/s Merbanc BSNV Securities Ltd. (hereinafter referred as sub-broker) is registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a sub-broker affiliated through M/s. HSE Securities Ltd., (member, National Stock Exchange of India Limited). SEBI conducted an inspection of the books of accounts, documents and other records maintained by the sub-broker for the years 2000 – 2001, 2001-2002 and April 2002 till May 29, 2002. Some of the deficiencies observed during the inspection are as follows:

- a) Not issued purchase and sale note to clients
- b) Delay in making payment to clients
- c) Delay in delivery of securities to clients
- d) Non segregation of clients' funds and own funds
- e) Default in payment of margin and pay in obligation
- f) Non furnishing of auditor's certificate

2.1 A copy of the inspection report was forwarded to the sub broker by SEBI, for its comments. The sub broker filed its comments to the said inspection report. Thereafter, SEBI appointed an Enquiry Officer vide order dated November 21, 2003 read with the subsequent order dated September 30, 2004, under the provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (for short, Enquiry Regulations) to enquire into the alleged deficiencies/irregularities (observed during the inspection) committed by the sub broker. The Enquiry Officer conducted the proceedings in terms of the Enquiry Regulations and recommended for the suspension of the certificate of registration of the sub broker for a period of two months.

3.1 Pursuant to the submission of the Enquiry Report, a notice dated May 29, 2006 was issued to the sub broker by SEBI, in terms of the provisions of the Enquiry 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. However, no reply is received by SEBI from the sub broker, so far. HSE Securities Ltd. vide letter dated August 31, 2006 inter alia informed SEBI that the sub broker was under liquidation as per the order of the Hon'ble High Court of Andhra Pradesh.

3.2 I have perused the Enquiry Report, the show cause notice sent to the sub broker and other materials available on record. The Enquiry Officer in his report inter alia observed that the sub broker had acted as an unregistered sub broker to Karvy Stock Broking Ltd. (member, National Stock Exchange of India Ltd.), for the year 2001- 2002. The details of the trades executed by the sub broker through the said member are as follows :

Contract date	note and	Name of scrip	Quantity	Rate (Rs.)	Amount
78783 / 07.02.01		Aksh Optic Fibre Ltd	100	146.10	14610.00
-do-		Square D Soft Ltd	20	442.20	8844.00
-do-		ITC	50	827.05	41358.00
-do-		VSNL	20	372.40	7440.00
-do-		TELCO	500	104.60	52300.00

3.3 The sub-broker had no valid certificate of registration from SEBI to act as a sub-broker to Karvy Stock Broking Ltd., as required under the provisions of section 12 of Securities and Exchange Board of India Act, 1992 (Act), the then existing Rule 3 of Securities and Exchange Board of India (Stock Brokers and Sub - Brokers) Rules, 1992 and the provisions of SEBI circulars dated May 21, 1997 which inter alia prohibits a person from acting as a sub-broker without obtaining registration certificate from SEBI.

3.4 I also note that the sub broker had not issued the purchase and sale note to clients for the transaction executed on their behalf, as required under clause B (2) of the Code of Conduct (as existed at the relevant time) specified in Schedule II of the Broker Regulations. The sub broker failed to give any explanation either before the Enquiry Officer or before me. The failure to issue confirmation memo cannot be taken lightly as the said document creates a contractual obligation on the part

of the sub broker towards the client. Therefore, it is fairly established that the sub broker had violated clause B (2) of the Code of Conduct specified in Schedule II of the Broker Regulations. I also note that the sub broker had also delayed in making payments to its clients in violation of clause B (1) of the Code of Conduct specified in Schedule II of the Broker Regulations read with the provisions of circulars dated November 18, 1993 and February 1, 2001 which inter alia provided for the timely payment to the clients. Besides, there was delay in delivery of securities to the clients. The instances of such failures were explained in detail in the Enquiry Report. In the absence of any explanation from the sub broker, it is established that the sub broker had violated clause B (1) of the Code of Conduct specified in Schedule II of the Broker Regulations and the provisions of circular dated November 18, 1993 stipulating timely delivery of securities to the clients. Further, I note that the sub broker had not segregated the clients account and own account as stipulated in terms of SEBI circular dated November 18, 1993.

3.5 The Enquiry Officer had given various instances wherein the sub broker had defaulted in payment of margins and pay in obligations to HSE Securities Ltd. The said default was in violation of the provisions of Clause D(1) of the Code of Conduct specified in Schedule II of the Broker Regulations read with the provisions of SEBI circulars dated July 27, 2000 and May 17, 2002. Besides, by not furnishing the auditors certificate on quarterly basis for margin collection, the sub broker violated the SEBI circular dated May 17, 2002. The sub broker had also failed to segregate clients' funds from own funds. During the course of inspection, it was observed that the sub broker maintained only one account (Canara Bank, HSE Branch) for the receipts and payments pertaining to it and the clients and that the sub broker paid rent, telephone bill etc from the said account. The said acts of the sub broker were in violation of the SEBI Circular dated November 18, 1993.

3.6 In the circumstances of the present case, it is fairly established that the sub broker had violated the provisions of the Act read with the provisions of the Broker Regulations and the SEBI Circulars, as specified in this order. As an intermediary operating in the securities market, the sub broker is duty bound to comply with the statutory provisions including various circulars issued by SEBI from time to time. He has a duty towards the securities market. Though sufficient opportunities were given to the sub broker to submit its explanation, the sub broker had failed to do so, either before me or before the Enquiry Officer. The various requirements under the Act and Regulations in respect of an intermediary are conceived in the interests of investor protection and further to ensure that the business and conduct of the intermediaries are undertaken on the basis of sound business principle. An intermediary is inter alia required to maintain high standards of promptitude and fairness while conducting his business. Taking into account the circumstances of the present case, the non compliance of statutory requirements on the part of the sub broker call for a penalty as ordered hereinunder.

4.1 In view of the foregoing, I, in exercise of the powers conferred vide section 19 of Securities and Exchange Board of India Act, 1992 read with regulation 13(4) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, hereby impose a minor penalty of censure on the sub broker, M/s Merbanc BSNV Securities Ltd., (Registration no.INS230909231).

G. ANANTHARAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai
Date: January 23, 2008