

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER

ORDER UNDER REGULATION 28(2) OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 IN THE MATTER OF ICAP INDIA PRIVATE LIMITED (FORMERLY GARBAN INTERCAPITAL IL PRIVATE LIMITED), MEMBER, NATIONAL STOCK EXCHANGE OF INDIA LIMITED.

Date of hearing: September 26, 2008

Appearance:

For ICAP India Limited: Mr. Somasekharan Sundaresan, Advocate
Mr. Mehul Shah, Advocate
Mr. Digant Bhansali, Vice President, ICAP India Pvt. Limited

For Securities and Exchange Board of India:
Mr. Suresh B. Menon, General Manager
Mr. Vijayakrishnan G., Assistant Legal Advisor
Mr. Laxman Datt Swami, Manager

1. Securities and Exchange Board of India (for short SEBI) conducted an inspection of the books of accounts, documents and other records of ICAP India Private Limited (formerly known as Garban Intercapital IL Private Limited), trading member (Wholesale Debt Market segment) of the National Stock Exchange of India Limited (NSE), in the month of March 2003 for the period 2001-02 and from April 2002 till the date of inspection. ICAP India Private Limited is hereinafter referred to as the Broker. SEBI, forwarded copy of the inspection report to the Broker and the Broker was further advised to offer its comments in respect of the observations of the said inspection report. Pursuant to the receipt of the comments of the Broker, SEBI, *inter alia*, vide order dated September 30, 2004 appointed an Enquiry Officer under the provisions of

Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) to enquire into the alleged violations committed by the Broker, as stated therein. The Enquiry Officer, vide report dated July 28, 2006 recommended the imposition of penalty of suspension of the certificate of registration of the Broker for a period of five working days. The Enquiry Officer, *inter alia*, observed that the Broker failed to exercise the necessary due diligence in the ordinary course of business. Pursuant to the submission of the Enquiry Report, a notice dated August 24, 2006 was issued by SEBI to the Broker asking it to show cause as to why the appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on it. A copy of the Enquiry Report was also forwarded to the Broker along with the said show cause notice. The Broker vide letter dated September 12, 2006 submitted its reply to the show cause notice. Thereafter, SEBI granted an opportunity of hearing to the Broker on September 26, 2008. Mr. Somasekharan Sundaresan, Advocate alongwith Mr. Mehul Shah, Advocate and Mr. Digant Bhansali (Vice President of the Broker) appeared before me and made submissions on behalf of the Broker *inter alia* on the basis of the reply of the Broker dated September 12, 2006.

2. I have considered the Enquiry Report, show cause notice issued to the Broker, the oral as well as the written submissions made on behalf of the Broker and other materials available on record. Though, Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, was repealed with effect from the notification of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, anything done and any action taken under the said Enquiry Regulations shall be deemed to have been done or taken or commenced under the corresponding provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008. Accordingly, this matter is dealt with in terms of the

Securities and Exchange Board of India (Intermediaries) Regulations, 2008. As the Enquiry Officer exonerated or took a lenient view in respect of all the charges leveled against the Broker except the charge relating to off market trades and the recommendation of the Enquiry Officer is based on the said finding, the learned counsel limited his arguments in respect of the said finding. Therefore, I consider it appropriate to deal with the allegation of 'off market trades', leveled against the Broker, in this order. The impugned trades of the Broker as observed by the Enquiry Officer are as follows:

Trade Date	Sec Type	Security	Issue	Buy Participant	Sell Participant
29-Mar-01	GS	CG2015	11.43%	IDBI Capital Market Services	SBI GILTS LTD.
07-Apr-01	GS	CG2008	11.40%	St. Bank of Mauritius	DSP Merrill Lynch
17-Apr-01	GS	CG2008	11.40%	St.Bank of Mauritius	Deutsche Securities India
23-Apr-01	GS	CG2015	11.43%	ICICI Banking Corp	Discount and Fin House of Ind
27-Apr-01	GS	CS2005	11.19%	HongKong Bank	CITI Bank
09-May-01	GS	CG2009	11.99%	Tata Finance Securities Ltd.	CITI Bank
11-May-01	GS	CG2012	11.03%	Discount and Fin.House of Ind	PNB Gilts Ltd.
30-May-01	GS	CG2004	11.50%	Andhra Bank	SBI Gilts Ltd.
25-Jun-01	GS	CG2011	10.95%	Syndicate Bank	HongKong Bank
02-Jul-01	GS	CG2011A	11.50%	Andhra Bank	The Saraswat Co-op- Bank Ltd.
04-Jul-01	GS	CG2011A	11.50%	Prudential ICICI Mutual Fund	State Bank of Mysore
11-Jul-01	GS	CG2012	11.03%	Vysya Bank	ICICI Securities LTd.
12-Jul-01	GS	CG2007	11.90%	Saraswat Co-op Bank Ltd.	Indian Bank
13-Jul-01	GS	CG2011A	11.50%	Discount and Fin House of Ind	Deutsche Bank
03-Aug-01	GS	CG2008	11.40%	Global Trust Bank Ltd.	Citi Bank
04-Aug-01	GS	CG2006	11%	Bank of India	Citi bank
06-Aug-01	GS	CG2013	9.81%	ICICI Banking Corp	Discount and Fin House of Ind
06-Aug-01	GS	CG2012	11.03%	IDBI Bank	ICICI Banking Corp
07-Aug-01	GS	CG2011A	11.50%	Citi Bank	Bank of India
07-Aug-01	GS	CG2006	11.68%	Bank of America	Credit Lyonnais Bk
09-Aug-01	GS	CG2006	11%	St Bank of Mauritius	Prudential ICICI Mutual Fund
13-Aug-01	GS	CG2011A	11.50%	UTI Bank	GILT Securities Trading Corp.
13-Aug-01	GS	CG2012	11.03%	Discount and Fin House of Ind	IDBI Capital Market Services
13-Aug-01	GS	CG2012	11.03%	Discount and Fin House of Ind	PNB Gilts Ltd.
08-Sept-01	GS	CG2005	11.19%	Citi Bank	The Saraswat Co-op Bank Ltd.
15-Sept-01	GS	CG2011A	11.50%	Corporation Bank	IDBI Capital Market Services
17-Sept-01	GS	CG2008	11.40%	Bank of India	HSBC Primary Dealership (I) Pvt.
17-Sept-01	GS	CG2012	11.03%	UTI Bank	Prudential ICICI Mutual Fund
27-Sept-01	GS	CG2008	11.40%	DSP Merrill Lynch	ICICI Banking Corp
28-Sept-01	GS	CG2011A	11.50%	ICICI Banking Corp	Discount and Fin House of Ind
16-Oct-01	GS	CG20112	11.03%	ICICI Ltd.	ICICI Banking Corp
31-Oct-01	GS	CG2015	9.85%	ICICI Ltd.	UTI Bank
01-Nov-01	GS	CG2015	11.43%	Citi Bank	UTI Bank
06-Nov-01	GS	CG2013	9.81%	Ahmedabad District Co-operative B	UTI Bank
07-Nov-01	GS	CG2018	10.45%	Kotak Mahindra Mutual fund	United Western Bank
12-Nov-01	GS	CG2012	11.03%	ICICI Banking Corp	Hong Kong Bank
12-Nov-01	GS	CG2012	11.03%	Discount and Fin House of Ind	Birla Mutual Bank
12-Nov-01	GS	CG2008	11.40%	Union Bank	Corporation Bank
12-Nov-01	GS	CG2010	11.30%	PNB Gilts Bank	UTI Bank
12-Nov-01	GS	CG2007	11.90%	Prudential ICICI Mutual Fund	UTI Bank
12-Nov-01	GS	CG2010	11.30%	PNB Gilts Ltd.	Corporation Bank
12-Nov-01	GS	CG2013	9.81%	PNB Gilts Ltd.	Sangli Bank Ltd.
12-Nov-01	GS	CG2015	9.85%	Bank of Punjab Ltd.	Cent Bk of India
12-Nov-01	GS	CG2016	10.71%	Hong Kong Bank	State bankof Mysore

12-Nov-01	GS	CG2013	9.81%	UTI Bank	IDBI Capital Market Services
12-Nov-01	GS	CG2006	11.68%	UTI Bank	Sundaram Mutual Fund.
12-Nov-01	GS	CG2015	11.43%	Credit Lyonnais Bk	PNB Gilts Ltd.
21-Nov-01	GS	CG2015	10.47%	DSP Merrill Lynch	Saraswat Co-operative Bank
21-Nov-01	GS	CG2008	10.40%	Credit Lyonnais Bk	Citi Bank Ltd.
23-Nov-01	GS	CG2012	11.03%	DSPML Trustee Co-Pvt Ltd. A/c. D Bond Fund	Andhra Bank
27-Nov-01	GS	CG2015	9.85%	State Bank of India	Citi Bank
12-Dec-01	GS	CG2015	9.85%	Templeton Mutual fund	Reliance Capital Mutual Fund
03-Jan-02	GS	CG2005	10.20%	IDBI Bank	HDFC Bank Ltd.
05-Jan-02	GS	CG2015	9.85%	GILT Securities Trading Corp.	PNB Gilts Ltd.

3. Considering the facts and circumstances of the case and also the submissions made by the learned counsel, the issue for consideration is whether the Broker had failed to exercise due diligence in the ordinary course of its business by executing the impugned trades as observed by the Enquiry Officer. Mr. Somasekharan Sundaresan, the learned counsel contended before me that, the Enquiry Officer committed an error in finding his client guilty of violations of off market trade norms in WDM Segment. According to him, the trades in WDM Segment, during the relevant period could be executed through off market deals or negotiated deals and the same were subsequently reported to NSE. According to him, the Broker, at the most, would be responsible for the delay in reporting certain off market trades to NSE. As the recommendation of the Enquiry Officer is based on SEBI circular dated September 14, 1999, NSE circular dated January 4, 1995 and Government of India Notification dated March 1, 2000, the learned counsel drew my attention to the said circulars / Notification. Government of India, vide the notification dated March 1, 2000 amended its earlier notification dated July 30, 1992. In terms of the notification dated March 1, 2000 any contract in Government securities, money market securities, gold related securities and in securities derived from these securities and in relation to ready forward contracts in bonds, debentures, debenture stock, securitised debt and other debt securities shall be entered into on the recognized stock exchange and shall be entered into in accordance with the following:

- (a) “ the rules or regulations or the bye-laws made under the Securities Contracts (Regulations) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the directions issued by the Securities and Exchange Board of India under the said Acts;
- (b) the rules made or guidelines or directions issued under the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulation Act, 1949 (10 of 1949) or the Foreign Exchange Regulation Act, 1973 (46 of 1973) by the Reserve Bank of India.
- (c) The provisions contained in the notification issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956).”

4. Mr. Somasekharan Sundaresan, the learned counsel vehemently argued before me that the Enquiry Officer mis-interpreted the aforesaid notification dated March 1, 2000. According to him, although the said notification covers transactions in WDM Segment, SEBI, so far, has not prohibited negotiated deals as such in WDM segment. He claimed that the finding of the Enquiry Officer is based on the circular of SEBI dated September 14, 1999. According to him, the findings of the Enquiry Officer in respect of trades in WDM segment based on the circular of SEBI dated September 14, 1999 are inappropriate. The learned counsel took me through the aforesaid circular wherein it is stated “.....All negotiated deals (including cross deals) shall not be permitted in the manner prescribed in circulars mentioned above and all such deals shall be executed only on the screens of the exchanges in the price and order matching mechanism of the exchanges just like any other normal trade. As government debt securities and money market instruments are under the regulatory jurisdiction of RBI and do not fall within the purview of SEBI, the aforesaid decision will not apply to such

securities”. Therefore, he submitted that so long as the aforesaid circular is in existence, SEBI cannot hold the Broker responsible for executing negotiated trades in WDM segment. To treat other wise, according to him, SEBI should have made appropriate amendments to its circular dated September 14, 1999. In practice, during the relevant period, WDM Segment trades were negotiated deals subject to its reporting to the Exchange. The learned counsel further stated that some of the trades (54) were not reported to NSE, as required under the provisions of NSE circulars due to oversight as during the relevant time, the Broker had executed about 13,000 trades in the WDM segment. I note that the inspection conducted on the Broker had observed only 54 instances wherein the trades were not reported to NSE and that too during a span of ten months. The learned counsel also drew my attention to the draft scheme for trading of Government Securities on the stock exchanges circulated by SEBI and RBI in 2002. He read out the relevant paragraph of the said draft, quoted herein below:

“While this segment has the facility to match trades, mostly it has been used for reporting of negotiated deals. The settlement of these deals is done directly between the counter parties on a trade for trade basis without netting on the RBI NDS platform and without the involvement of the stock exchange and its settlement guarantee fund.” (Para 1.4 of the said draft scheme)

“It can be seen from the above that the present module for secondary market trading in Government Securities is distinctly different from that of equity trading..... The trades are done through negotiations, with the knowledge of counter parties and usually over the phone rather than the trades being matched on an anonymous automated price time priority mechanism.”

5. The learned counsel further drew my attention to the observation of the Enquiry Officer that “trading in the WDM segment is indeed more of a telephony

market, whereby the deals are negotiated between the buy and the sell client and then executed accordingly and reported to the Exchange.” Thus, the Enquiry Officer had not observed any irregularity in respect of negotiated deals in the WDM Segment during the relevant point of time. The Enquiry Officer also observed that the details of the trades are to be reported to the Exchange subsequent to its execution. The learned counsel submitted that the very observation of the Enquiry Officer would fortify his contention that the role of the Broker was only to report the negotiated trade details to the Exchange. I note that, NSE, vide circulars dated November 1, 1994 and November 7, 1994 stipulated that all trading members of WDM segment and participants shall provide the information related to settlement of trades to the Exchange (NSE) within twenty four hours. Subsequently, NSE vide circular dated January 31, 2005 made appropriate changes in the aforesaid circulars and had further decided to discontinue the requirement of reporting information related to settlement by trading members and participants for Government Securities for trades having settlement date of February 2, 2005 and thereafter, for the reasons stated therein. During the course of hearing, the Broker stated that the requirement was only to report the information related to the trades, within the specified time. Admittedly, the Broker had failed to report certain trades to NSE. The Broker was not a principal in respect of the impugned trades and that most of its clients were Banks in respect of the said trades. I note that, in terms of NSE circular dated January 4, 1995, contract notes could be issued by the members only in respect of deals executed on the NSE WDM System. There is a duty cast upon the Broker to report the information related to the trades, to the Exchange (NSE), within the stipulated time, as stated above in this order. I also note the submissions of the learned counsel that most of the clients (in respect of 54 trades) which were admitted to have not been reported by the Broker were on behalf of the Banks. In this context, the learned advocate further relied upon the RBI circular No.FSC.BCC.143A/24.48.001/91-92 dated June 20,

1992. Relying upon the said circular, he pointed out that, in a WDM Segment transaction, the role of the stock broker is restricted to that of bringing the two parties to the deal together and that both the fund settlement and delivery of security should be directly between the banks and the stock broker shall have no role to play in the process. According to him, neither the funds nor the securities are routed through the stock broker. In the Enquiry Report, it is observed that the transaction in WDM Segment takes place on negotiated terms. The Broker in its letter dated September 12, 2006 *inter alia* stated that it had acted in good faith and in a bonafide manner and that there was no instance of any alleged violation of the Regulations by them in the past. The learned counsel also pointed out that the Broker was already been penalized by NSE for the violations observed in the inspection report in respect of the allegation of off market trades. According to him, the facts and circumstances of the case do not warrant a penalty of suspension of the certificate of registration. The Broker admittedly failed to report some of the negotiated trades to NSE. As an intermediary, the Broker has a duty to comply with various requirements which are conceived in the interests of securities market. Besides, an intermediary is *inter alia* required to maintain high standards of promptitude and fairness while conducting his business. Considering the totality of the facts and circumstances of the present case and the view taken in comparable cases, I do not consider it fit to impose the penalty as recommended by the Enquiry Officer and I, dispose of the present enquiry proceedings, as ordered herein under.

6. In view of the foregoing, I, in exercise of the powers conferred on me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby warn the stock broker namely, ICAP

India Private Limited, Trading Member of the National Stock Exchange of India Limited (Registration No. INB 231140337) to be more cautious in the conduct of its business and to adhere to and comply with all statutory provisions/instructions received in the discharge of its function as a stock broker.

K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: November 21, 2008