WTM/PS/04/IVD/ID-06/APRIL/2012

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

IN THE MATTER OF CYBERSPACE LIMITED
In respect of M/s Claridges Investment and Finance Pvt. Ltd.
(SEBI Registration No. INB 011060531, INB231060535)

Date of Hearing: September 02, 2011

Appearance
For noticee: Mr. Amit Yadkikar, Advocate
Mr. Ashwin Shah, CFO
For SEBI: Mr. Biswajit Choudhury, Deputy General Manager
Ms. Anitha Anoop, Deputy Legal Adviser
Ms. K Muthulakshmi, Assistant General Manager
Ms. Vasudha Goenka, Assistant Legal Adviser

ORDER

Under Regulation 28(2) read with Regulation 38(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation in trading in the scrip of M/s Cyberspace Ltd. (hereinafter referred to as **"CSL"/ "Company"**) for the period from October 1999 to March 2001 (hereinafter referred to as **"Investigation Period"**). CSL was trading at around Rs.1,200/- per share in the month of September 2000. Subsequent to the sub-division of the equity shares from Rs.10/- to Rs.2/-, the price was proportionally reduced to Rs.186/- with effect from September 26, 2000. Since then, the price of the scrip moved in the range of Rs.190/- to Rs.147/- till February, 2001. Thereafter, M/s. Century Consultants (hereinafter referred to as **"CCL"**), a registered stock broker of the National Stock Exchange (**NSE**) and the Bombay Stock Exchange (**BSE**) defaulted and the price of the scrip of CSL fell everyday by 16% (Lower Circuit). Manipulative activities in the scrip of CSL were allegedly noticed against certain market participants by SEBI, during the course of its investigation.

2. M/s Claridges Investment and Finance Pvt. Limited (hereinafter referred to as **"CIFPL/Noticee"**) is a stock-broker registered at both BSE and NSE. The noticee

traded in the scrip of CSL on behalf of its client, CCL. It was alleged, inter alia, that the noticee was a part of manipulation in the scrip of CSL

3. Based on the findings of the investigation, SEBI initiated enquiry proceedings as against the noticee in terms of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations'), by appointing an Enquiry Officer, vide order dated November 5, 2007 read with another order dated November 12, 2009, under Regulation 5(1) of Enquiry Regulations [since repealed by SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as the **'Intermediaries Regulations'**) with effect from May 26, 2008] to enquire into the alleged violation of the provisions of Regulations 4(a), 4(b), 4(c) and 4(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995 (hereinafter referred to as **"PFUTP 1995"**) read with corresponding Regulations 3, 4(1), 4(2) (a), 4 (2) (b), 4 (2) (d), 4(2) (e), 4 (2) (g), 4 (2)(n) and 4(2)(o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) of Regulations, 2003 (hereinafter referred to as **"PFUTP 2003"**) and Clauses A(1), A(2) and A(5) of the Code of Conduct for Stock Brokers as stipulated in Schedule II under Regulation 7 of the SEBI (Stock brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as **"Broker Regulations"**). The Enquiry Officer/ Designated Authority (hereinafter referred to as the **"Enquiry Officer"**) submitted his Report dated September 30, 2010 in terms of Regulation 27 of the SEBI (Intermediaries) Regulations, 2008, recommending thereby a warning against the noticee.

4. Subsequently, a show cause notice dated October 4, 2010 (hereinafter referred as SCN') under Regulation 28 of the SEBI (Intermediaries) Regulations, 2008, was issued by SEBI to the noticee, asking it to show cause as to why action should not be taken against it as recommended by the Enquiry Officer or a higher penalty should not be imposed as deemed fit by the Competent Authority. The noticee was advised to reply to the SCN, within twenty one days from the date of receipt thereof. It was also informed that in case of failure to reply to the SCN, it would be presumed that it had no explanation to offer and that SEBI shall be free to take such action in the

manner as it deemed fit. A copy of the Enquiry Report was also forwarded to the noticee along with the SCN.

5. The noticee, vide its letter dated October 25, 2010, requested for an extension of 2 weeks for filing their reply. However, no reply was received from the noticee. A reminder, vide letter dated May 24, 2011, was sent to the noticee directing it to file its reply within 10 days from the date thereof. Thereafter, another reminder letter dated June 21, 2011 was sent to the noticee asking it to file their reply within 10 days, but the entity did not file any reply to the SCN. Before proceeding further, an opportunity of personal hearing was granted to the noticee on September 02, 2011 vide hearing notice dated July 19, 2011, but the letter could not be delivered to the entity. Therefore, a letter dated July 28, 2011 was sent to the noticee's advocate for onward delivery of the notice for hearing to the noticee. In the meantime, the noticee replied to the SCN vide its letter dated July 25, 2011. On the date scheduled for personal hearing, Mr. Amit Yadkikar, Advocate and Mr. Ashwin Shah, CFO of the noticee appeared and made oral submissions. The submissions of the noticee, *inter alia,* are:
    - The noticee did not wish to file any further written submissions and its previous replies may be considered.
    - The noticee has not been operating as a broker for the past 7-8 years and its registration is not active.

6. I have carefully considered the SCN, reply of the noticee and the material available on record. The issues that arise for my consideration are as under:
    - Whether the noticee acted as a broker for another broker, namely CCL in violation of circular no. SEBI/MIRSD/Cir-06/2004 dated January 13, 2004?
    - Whether the noticee failed to maintain proper and complete KYC forms, in contravention of SEBI's circulars no SMD/POLICY/ECG/1-97 dated February 11, 1997 and SMD/POLICY/CIRCULAR/5-97 dated April 11, 1997, thus violating clause A(2) of Code of Conduct for Stock Brokers as stipulated in Schedule II under Regulation 7 of the Broker Regulations?

- Whether the noticee made payments to its client CCL prior to the payout at the exchange in violation of Clause A(5) of the Code of Conduct for Stock Brokers as prescribed under Regulation 7 of the Broker Regulations?
- Whether the noticee indulged in price manipulation in the scrip of CSL in violation of Regulations 4(a), 4(b), 4(c) and 4(d) of PFUTP 1995 read with corresponding Regulations 3, 4(1), 4(2) (a), 4 (2) (b), 4 (2) (d), 4(2) (e), 4 (2) (g), 4 (2)(n) and 4(2)(o) of PFUTP 2003?

7. **Whether the noticee acted as a broker for another broker, namely CCL in violation of circular no. SEBI/MIRSD/Cir-06/2004 dated January 13, 2004?**

i. I note that the noticee had executed transactions in the scrip of CSL on NSE and BSE during the investigation period on behalf of its client, CCL. The noticee, on behalf of its client CCL, had dealt at BSE in Settlement No. 117 of 2000-2001 to Settlement No. 180 and at NSE in Settlement No.2000203 to 2000237 for sales transactions. In case of purchase transaction, the client had dealt in Settlement No. 207 of 2000-2001 at BSE and Settlement No. 2001014 at NSE.

ii. The noticee, a broker of BSE and NSE, hence traded on behalf of CCL, which was also broker on same exchanges. SEBI circular No SEBI/MIRSD/Cir-06/2004 dated January 13, 2004 prohibits stock brokers and sub brokers of an exchange to deal with brokers of the same exchange either for proprietary trading or for trading on behalf of clients, except with the prior permission of the exchange. However, I note that this circular was issued in 2004, while the aforesaid transactions happened during 2000-2001. In view of the same, it cannot be said that the noticee violated the aforesaid circular.

8. **Whether the noticee failed to maintain proper and complete KYC forms, in contravention of SEBI's circulars no SMD/POLICY/ECG/1-97 dated February 11, 1997 and SMD/POLICY/CIRCULAR/5-97 dated April 11, 1997,**

thus violating clause A(2) of Code of Conduct for Stock Brokers as stipulated in Schedule II under Regulation 7 of the Broker Regulations?

I note that while opening the account of CCL, the noticee failed to ensure that the KYC forms were complete. The noticee has submitted that this has occurred due to their lack of familiarity with the relevant requirements at the time. However, KYC norms were made mandatory vide circular No. SMD/ POLICY/ECG/1-97 dated February 11, 1997 and SMD/POLICY/CIRCULAR/5-97 dated April 11, 1997. In view of the same, I agree with the finding of the Enquiry Officer that the noticee has not exercised proper due diligence while opening the account of CCL, and has thus violated clause A(2) of Code of Conduct for Stock Brokers as stipulated in Schedule II under Regulation 7 of the Broker Regulations.

9. **Whether the noticee made payments to its client CCL prior to the payout at the exchange and received third party delivery in violation of Clause A(5) of the Code of Conduct for Stock Brokers as prescribed under Regulation 7 of the Broker Regulations?**

i. I note from the demat account of CCL that the deliveries for most sales were received from demat accounts other than the ones submitted by the client, CCL. Thus, the deliveries had come from third parties. In this regard, the noticee has submitted that it had no means of verifying from where the deliveries were made. I do not find merit in this submission of the noticee.

ii. Furthermore, I note that payments, for the sale transactions in CSL shares, were made to CCL prior to the payout at the exchange. Thus, the noticee was financing CCL. Payments were made before the date of billing/transaction. The noticee has submitted that though this was indeed done, it was only with the intention of making new clients. However, this does not excuse the conduct of the noticee. Hence, I find

that the noticee made payments to CCL prior to the payout at the exchange.

iii. Therefore, in view of the above, I agree with the finding of the Enquiry Officer that the noticee violated clause A(5) of Code of Conduct for Stock Brokers as stipulated in Schedule II under Regulation 7 of the Broker Regulations as the said act of the noticee is not in consonance with Rule 8 (1) (f) of Securities Contracts (Regulation) Rules, 1957.

10. **Whether the noticee indulged in price manipulation in the scrip of CSL in violation of Regulations 4(a), 4(b), 4(c) and 4(d) of PFUTP 1995 read with corresponding Regulations 3, 4(1), 4(2) (a), 4 (2) (b), 4 (2) (d), 4(2) (e), 4 (2) (g), 4 (2)(n) and 4(2)(o) of PFUTP 2003?**

i. I note from the Enquiry Report that a total of 17 deals were executed by the noticee during the investigation period across various trading members wherein

- the difference in the buy and sell order entry time of less than one minute,
- the difference in the buy and sell order limit price is zero and
- the traded quantity per trade is more than or equal to 1000 shares

ii. I note that these 17 deals amounted to a total of 42,610 shares during the period, constituting between 1.48% and 5.66% of the market gross quantity for individual days during the period. Further, the variation in the traded price to the last traded price for individual deals ranged from 0.28 % to 0.00%. I also note that in all the above deals, the noticee was on the sell side of the transaction.

iii. I note the observation of the Enquiry Officer that the difference from the last traded price for individual deals ranged from 0.28 % to 0.00%. I also note that the noticee only sold shares of CSL and did not purchase

any shares. In view of the same, I agree with the finding of the Enquiry Officer that the allegation of price manipulation in the said scrip against the noticee does not stand established.

11. Thus, in view of the foregoing, I conclude that the noticee violated provisions of Clauses A(2) and A(5) of the Code of Conduct for Stock Brokers stipulated in Schedule II under Regulation 7 of the Broker Regulations.

12. I note that pursuant to the notification of the Intermediaries Regulations, the Regulations have been repealed and in terms of Regulation 38(2) of the Intermediaries Regulations, notwithstanding such repeal, any enquiry commenced under the Enquiry Regulations, shall be deemed to have been commenced under the corresponding provisions of the Intermediaries Regulations.

13. Taking into consideration, the facts and circumstances of the case, I, in exercise of the powers conferred upon 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 noticee M/s Claridges Investment and Finance Pvt. Ltd., having PAN No. AAACC1607N and SEBI registration no. INB 011060531, INB231060535, to be cautious in its future dealings and exercise due care and diligence in the conduct of its affairs in the securities market. Further, any future instance of violation or non-compliance by it with the SEBI Act and Rules and Regulations framed there under shall be dealt with stringently.

DATE: April 9, 2012
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA