

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11, 11B AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN RESPECT OF M/S UNIQUE CONSULTING & TRADING PRIVATE LIMITED, MEMBER OF MADRAS STOCK EXCHANGE (STOCK BROKER REGISTRATION No. INB041452138 AND INF041452138) AND MR. P. SHANMUGA GANESAN, MR. K. MATHAN KUMAR, MS. U. INDIRA AND MS. JANET JENETHA

1. M/s. Unique Consulting & Trading Private Limited (hereinafter referred to as "Unique Consulting") was a registered stock broker of Madras Stock Exchange Limited (hereinafter referred to as "MSE") with SEBI registration numbers INB041452138, and INF041452138 for Cash and F&O segments, respectively.
2. Unique Consulting is promoted by Mr. P. Shanmuga Ganesan and Mr. K. Mathan Kumar who also acted as its Managing Director and Director respectively. Further, Ms. U. Indira and Ms. Janet Jenetha were appointed as the directors of Unique Consulting. The details of these promoters and directors are enumerated hereunder:

Sl. No	Names	Designation	PAN	DIN
1	Mr. P. Shanmuga Ganesan	Managing Director, Promoter	BDAPS0331N	03579814
2	Mr. K. Mathan Kumar	Director, Promoter	AQRPM0642B	03579799
3	Ms. U. Indira	Director	AAUPI9812N	03578157
4	Ms. Janet Jenetha	Director	AOVPJ2773C	03578164

3. During the inspection of MSE by SEBI, it was *inter alia* observed that:
 - (i) MSE received several complaints against M/s Unique Consulting and its Managing Director, Mr. P. Shanmuga Ganesan from some of its clients and other general investors alleging *inter alia* collection of deposits from them on the promise of assured returns, non-delivery of securities, non-pay out of funds for the concluded transactions. The complainants also alleged that Mr. P. Shanmuga Ganesan had been

absconding. The details of some the complaints received against Unique Consulting are as under:

Sl. No.	Client Name	Nature of Complaint
1	S. Thangavelu	Non-transfer of shares bought on account of the client
2	K. Thirumalai,	Sale of 500 - shares of IOB - Non-receipt of sale proceeds
3	A. Pagam PiriyaI	Amount collected from the client assuring periodical returns
4	N. Asha Latha	Amount collected from the client assuring periodical returns
5	N. Asha Latha	100 - shares of Punjab & Sind Bank of the client, sold without her concurrence
6	C. Prabhakaran	Amount collected from the client assuring periodical returns
7	S. Subramanian	Shares sold without the client concurrence and knowledge - sale proceeds not paid to the client

- (ii) Pursuant to these complaints against Unique Consulting, MSE deactivated the trading terminal of Unique Consulting and blocked the Demat Client Beneficiary account of Unique Consulting maintained with MSE.
- (iii) MSE undertook inquiry into the complaints and also undertook physical verification of the office of Unique Consulting. Pursuant to these, MSE suspended Unique Consulting from trading, and issued a public notice to this effect and to caution the general public to not to deal with it.
- (iv) It was further revealed that Mr. P. Shanmuga Ganesan, the Managing Director of Unique Consulting had collected money from its clients and other general investors in cash and through cheques, promised them with assured returns and issued certificates, purported to be the Deposit Certificates, to those clients and other general investors acknowledging the sum so collected from them with a promise to repay the amount as specified in the certificate subject to "*General terms and conditions*" as mentioned therein.
- (v) At the time of collection of deposits, Mr. P. Shanmuga Ganesan had conveyed to the investors that the Deposit Certificates had to be received from SEBI and that it would take about 10 days to handover the certificates to the investors once it is received from SEBI. The said Deposit Certificates were issued in the name of

Unique Consulting and also displayed the SEBI registration number of Unique Consulting.

- (vi) Funds amounting to more than ₹53 lakhs was collected by Unique Consulting from its clients and other general investors and deposit certificates were found to be issued to about 21 such investors by Unique Consulting under different schemes, details of which are mentioned below:

Sl. No	Client Code	Client Name	Plan & term	Payment Date	Amount (in ₹)
1	269TVL0137	Carat Prabhakaran R.	Short term (3 Months)	03/10/2012	100000
			Short term (3 Months)	04/10/2012	100000
			PMS/Monthly	24/09/2012	100000
			PMS/Monthly	10/08/2012	100000
			Short term (3 Months)	08/06/2012	100000
			PMS/Monthly	13/07/2012	100000
			Short term (3 Months)	21/05/2012	100000
			Short term (3 Months)	10/08/2012	100000
			PMS/Monthly	17/09/2012	100000
			PMS/Monthly	03/10/2012	100000
2	269TVL0007	Bala Subramanian M	Short term (3 Months)	26/05/2012	50000
			Short term (3 Months)	03/07/2012	100000
3	269TVL0019	Veera Lakshmi B	Short term (3 Months)	27/06/2012	50000
			Short term (3 Months)	25/06/2012	50000
4	269TVL0096	Augustin Arputharaj G	PMS/Monthly	05/10/2012	200000
			PMS/Monthly	06/08/2012	200000
5	269TVLO118	Mrudula R S	PMS/Monthly	09/06/2012	500000
6	269TVL0043	Lakshmanan K	Short term (3 Months)	30/05/2012	50000
7	269TVL0123	Krishnaveni K	Short term (3 Months)	16/05/2012	50000
8	269TVL0095	Subramanian S	PMS/Monthly	03/10/2012	50000
9	269ADR0006	Pavithra K	Short term (3 Months)	21/05/2012	100000
10	269ADR0008	Poothamani R	Short term (3 Months)	25/09/2012	100000
11	269ADR0020	Ramasundaram E	Short term (3 Months)	05/06/2012	50000
12	269TVL0012	Rama Nathan L	Short term (3 Months)	08/09/2012	50000
13	269TVL0046	William Thomas T S	PMS/Monthly	18/06/2013	100000
14	269TVL0103	Dharmaraj Jacob S	PMS/Monthly	14/08/2012	725000
15	269TVL0032	Vijayalakshmi R	Short term (3 Months)	04/05/2012	50000
16	269TVL0091	Uma M	PMS/Monthly	08/05/2012	700000
17	269TVL0002	Nataraj S	Short term (3 Months)	05/11/2012	50000

18	269TVL0051	Senthil Kumar K	PMS/Monthly	21/06/2012	500000
19	269ADR0021	Vijayan K S V	Short term (3 Months)	27/07/2012	400000
20	269TVL0025	Esakki A	Short term (3 Months)	10/06/2012	50000
21	269TVL0034	Krishnan L	Short term (3 Months)	28/05/2012	50000
			Short term (3 Months)	26/04/2012	50000
			Short term (3 Months)	26/05/2012	50000
			Total		53,25,000

- (vii) The actual amount collected by Unique Consulting by way of deposits from its clients and other general investors under various schemes could be much higher than ₹53.25 lakhs since deposit was collected from various investors including those who were not the registered clients of Unique Consulting.
- (viii) The funds so collected by Unique Consulting had not been routed through its designated bank accounts, viz. HDFC Bank A/c Nos. 06360340000099 and 06360340000082. The aforementioned bank accounts were the designated bank accounts for the purposes of trading and settlement.
- (ix) Another bank account (ICICI Bank, Tirunelveli Branch) operated by Unique Consulting had not been declared by it to MSE.
- (x) In view of the seriousness of the irregularities, MSE initiated disciplinary proceedings against Unique Consulting through its Disciplinary Action Committee (DAC) and vide its order dated October 8, 2013, expelled Unique Consulting from its membership.
- (xi) MSE also lodged a complaint with the Superintendent of Police, Economic Offences Wing, (Financial Institutions), Chennai - 600040 against Unique Consulting and all its promoters/directors alleging deceit and criminal intent, and for taking appropriate action against them.
4. Admittedly, Unique Consulting has collected money from its clients and other general investors. In fact, the Managing Director of Unique Consulting has admitted to MSE about the collection of money from its clients and other general investors. I note that Mr. K. Mathan Kumar and Ms. Janet Jenetha, the directors of Unique Consulting, in their respective depositions before DAC also admitted to be aware about the collection of funds by Unique Consulting. Apparently, some of the Deposit Certificates issued by Unique Consulting to its clients/ other general investors were signed by Ms. U Indira, a director of Unique Consulting.

5. I also note that the Deposit Certificates issued by Unique Consulting to its clients and other general investors in lieu of their investments contained details like SEBI registration number of Unique Consulting, date of payment/investment, mode of payment/scheme (e.g. short term, PMS/Monthly, PMS/3 months, etc.) and estimated amount to be repaid to the depositors on maturity. Further, Unique Consulting has issued advertisements wherein it has claimed that in addition to the stock broking, it offered services of “*online trading, IPOs, mutual funds, insurance, fixed deposits, depository services, investment banking and wealth management*”.
6. I find that the complaints by the clients of Unique Consulting and/or other general investors regarding the collection of money by Unique Consulting and the Deposit Certificates issued by Unique Consulting promising its investors guaranteed high return are sufficient grounds to conclude that Unique Consulting had been collecting money from the public in the form of deposit schemes. The use of the terms like “short term”, “PMS/Monthly”, “PMS/3 months”, etc. in the Deposit Certificates issued by Unique Consulting, and the advertisements/pamphlets issued by Unique Consulting claiming to offer services including wealth management *prima facie* indicate that the offered by Unique Consulting are in the nature of portfolio management schemes. Further, the schemes devised/offered and operated by Unique Consulting were with the complete knowledge of its promoters/directors and as such they were not only responsible for misleading the clients of Unique Consulting and other general investors but also for collecting funds from them and promising unrealistic returns. As per SEBI records, neither Unique Consulting nor its promoters/directors have obtained certificate of registration as a portfolio management services as required in terms of section 12(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the SEBI Act") read with regulation 3 of the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993 (hereinafter referred to as "the Portfolio Managers Regulations").
7. In view of the above, I find that Unique Consulting and its promoters/directors were soliciting the clients of Unique Consulting and other general investors to entrust their funds and securities to them and offering portfolio management and advisory services without obtaining the certificate of registration from SEBI to act as a portfolio manager as required under section 12(1) of the SEBI Act read with regulation 3 of the Portfolio Managers Regulations. The relevant provisions of the Act and the Regulations are reproduced as following:-

"SEBI Act, 1992

Section 12(1) –

"No stock-broker, sub- broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who

may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act."

SEBI (Portfolio Managers) Regulations, 1993

Regulation 3 –

"No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations:"

8. I also note that Unique Consulting and its promoters/directors have indulged in fund-based activities involving personal financial liability, which it is prohibited to undertake as a SEBI registered stock broker of a recognized stock exchange in terms of rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "the SCRR") which reads as under:

"Qualifications for membership of a recognised stock exchange.

8. The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:

.....

(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if –

.....

*(f) he engages either as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability, provided that -
....."*

9. I, therefore, find that Unique Consulting and its promoters/directors have contravened the provisions of section 12(1) of the SEBI Act read with regulation 3 of the Portfolio Managers Regulations as well as rule 8(3)(f) of the SCRR.
10. I further note from the inquiry conducted by MSE that some of the investors of the schemes floated by Unique Consulting had made cash payments towards their deposits. This *prima facie* appears to be in gross violation of the existing Regulations and bye-laws of the MSE.
11. In view of the aforesaid, I, *prima facie*, find that Unique Consulting and its said promoters/directors were not only acting as a portfolio manager without holding a valid certificate of registrations from SEBI but were also collecting deposits from the clients of Unique Consulting and other general investors in a fraudulent manner by misrepresentation, in contravention of section 12(1) of the SEBI Act, 1992 read with regulation 3 of the Portfolio Managers Regulations, and rule 8(3)(f) of the SCRR but also clause (5) of the Code

of Conduct prescribed for stock brokers in Schedule II read with regulation 9 of the Securities and Exchange Board of India (Stock brokers and Sub brokers) Regulations, 1992, which read as under:

“Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

(a)

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

.....

(e) he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

.....”

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992

CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

“A General

.....

(5) Compliance with Statutory requirements: A Stock broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchanges from time to time as may be applicable to him.”

12. I note that Unique Consulting has prominently displayed its SEBI registration No. INB041452138 as a box item in the said deposit certificates. This *prima facie* appears to be an attempt by Unique Consulting to:

- (a). make knowing misrepresentations so as to claim authenticity to the deposit certificates issued by it to its clients and other general investors;
- (b). make reckless representation in order to create an impression in the minds of its clients and other general investors that it is authorised by SEBI to collect funds from its clients and other general investors;
- (c). claim authenticity of the scheme offered by it to its clients and other general investors; and
- (d). enticed its clients and other general investors to invest their money in the schemes operated by it.

13. By their acts and omissions, Unique Consulting and its promoters/directors have solicited, enticed and induced investors to deal in securities and have also collected funds from its clients and other general investors through misrepresentation. Further, it has issued advertisements claiming to offer services like “*online trading, IPOs, mutual funds, insurance, fixed deposits, depository services, investment banking and wealth management*” in addition to stock broking. This *prima facie* appears to be a representation made in a reckless and careless manner. In my view the *modus operandi* of Unique Consulting and its promoters/directors indicates a scheme, plan, device or artifice or contrivance that is, besides being in contraventions of the Act and the Regulations as discussed above, is 'fraudulent' as defined in regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "the PFUTP Regulations") which reads as under:-

Definition of “fraud” – Regulation 2(1)(c).

(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) a promise made without any intention of performing it;*
- (5) a representation made in a reckless and careless manner whether it be true or false;*
- (6) any such act or omission as any other law specifically declares to be fraudulent;*
- (7) deceptive behaviour by a person depriving another of informed consent or full participation;*
- (8) a false statement made without reasonable ground for believing it to be true;*
- (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*

And “fraudulent” shall be construed accordingly;

.....”

14. In light of the aforesaid observations, I, *prima facie*, find that Unique Consulting and its promoters/directors not only contravened the provisions of the Act and the Portfolio Managers Regulations but have also acted in fraudulent and deceitful manner which attracts prohibitions enshrined in section 12A (a) (b) and (c) of the Act and regulation 3 (b), (c) and (d) and regulation 4(1) and 4(2) (k) of the PFUTP Regulations which read as following:-

Section 12A of the SEBI Act-

"Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;"

Regulation 3 of the PFUTP Regulations -

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a).....
.....

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under."

"4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

.....
.....
.....

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

....."

15. Since the conduct of Unique Consulting and its promoters/directors is not in the interest of investors in the securities market, necessary action has to be taken against them immediately, else it may lead to loss of investor's trust in the securities market. I find that Unique Consulting and its promoters/directors made unrealistic claims of returns as discussed earlier and by nature of their acts and omissions, they tried to solicit, entice and induce investors to deal in securities. As a regulator of the capital markets, SEBI has the duty to safeguard the interest of the investors and protect the integrity of the securities market. I am convinced that this is a case where effective and expeditious action is required to be taken not only to prevent any further harm to investors but also to send a stern message to prevent any person from indulging in acts as observed in this case.
16. In view of the aforesaid findings, I, in exercise of powers conferred upon me by virtue of section 19 read with sections 11(1), 11(4), 11B and 11D of the SEBI Act by way of this *ex-parte* order:
- i. restrain Unique Consulting (SEBI Stock Broker Registration No. INB041452138, and INF041452138) and its promoters/directors from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner;
 - ii. direct Unique Consulting and its promoters/directors to cease and desist from undertaking the portfolio management activities or any unregistered activity in the securities market, directly or indirectly, in any manner whatsoever;
 - iii. direct Unique Consulting and its promoter/directors to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, etc. in relation to the portfolio management activities or any unregistered activity in the securities market;
 - iv. prohibit Unique Consulting and its promoters/directors from mobilizing funds from its clients or other general investors or offering any portfolio management activities, in whatever form;
17. A copy of this Order shall be served on all recognized stock exchanges and depositories to ensure to ensure that the directions given in Para above are strictly complied with.
18. The above directions are without prejudice to the right of SEBI to take any other action that may be initiated against Unique Consulting and its promoters/directors in accordance with law.

19. The entities/persons against whom this Order is being passed may file their objections, if any, within twenty one (21) days from the date of this Order and, if they so desire, may avail themselves of an opportunity of personal hearing before the Securities and Exchange Board of India at its Head Office at SEBI Bhavan, Plot C 4 – A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051 on a date and time to be fixed on a specific request in writing, to be received in this behalf from the entities/persons.
20. This order shall come into force with immediate effect.

DATE: April 21st, 2014

PLACE: MUMBAI

RAJEEV KUMAR AGARWAL

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA