

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA  
CORAM: DR.K.M. ABRAHAM, WHOLE TIME MEMBER**

**ORDER**

**UNDER REGULATION 28(2) OF THE SECURITIES AND EXCHANGE BOARD  
OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST VCK SHARE &  
STOCK BROKING SERVICES LIMITED**

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) had conducted an inspected into the books of accounts and other documents of the stock broker, VCK Share & Stock Broking Services Limited (hereinafter referred to as the stock broker) for the period- April 1, 2002 to March 31, 2004. The stock broker is a member of the National Stock Exchange Board of India (hereinafter referred to as NSE), the Calcutta Stock Exchange Limited (hereinafter referred to as CSE), the Ahmedabad Stock Exchange Limited (hereinafter referred to as ASE) and the Over-the Counter Stock Exchange of India Limited (hereinafter referred to as OTCEI). In order to enquire into the allegations levelled against the stock broker, an Enquiry Officer/Designated Authority (hereinafter referred to as the Enquiry Officer) was appointed vide an Order dated February 15, 2005 read with subsequent Orders dated December 20, 2005, July 19, 2007 and December 10, 2008. Pursuant to the said enquiry, the Enquiry Officer in his Report dated August 26, 2010 (hereinafter referred to as the Enquiry Report), while finding the stock broker guilty of having contravening the provisions of law as mentioned therein, had recommended that the certificate of registrations of the stock broker pertaining to CSE, NSE, ASE and OTCEI, be suspended for a period of one month.

2. Thereafter, a notice dated November 8, 2010 (enclosing therewith a copy of the Enquiry Report) was issued to the stock broker requiring it to show cause in

terms of Regulations 28(1) and Regulation 38(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as the Intermediaries Regulations) as to why action should not be taken against it as recommended by the Enquiry Officer or a higher penalty as deemed fit by the Competent Authority be imposed. Subsequently, the stock broker made its submissions vide letter dated January 31, 2011. An opportunity of hearing was also afforded to the stock broker on April 7, 2011 and the same was re-scheduled to May 18, 2011 on the request of the stock broker. Pursuant to another request made on behalf of the stock broker, the hearing was finally scheduled on May 12, 2011. On the said date, Mr. Rajesh Khandelwal, Advocate, represented the stock broker and made submissions, which were on the lines of the stock broker's reply dated January 31, 2011. The learned advocate also submitted that the alleged violation happened way back in 2002 and that in similar matters, the Hon'ble Securities Appellate Tribunal and SEBI has taken lenient view while imposing penalty. He further stated that the deficiencies were rectified.

3. I have considered the Enquiry Report, the reply dated January 31, 2011 of the stock broker and the submissions made by the learned counsel in the hearing and other material available on record. The Enquiry Officer has found that the stock broker has contravened the following provisions:

- i. SEBI Circular No. SMD/MDP/CIR/043/96 dated August 5, 1996;
- ii. Regulation 3.6 of the NSE Capital Market Segment;
- iii. SEBI Circular No. SMD/POLICY/IECG/ 1 – 97 dated February 11, 1997;
- iv. SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993;
- v. SEBI Circular No. SMDRP/Policy/Cir-05/2001 dated February 1, 2011;
- vi. Rule 4(e) of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Rules, 1992 and provisions of Regulation 6.1.15 of NSE Capital Market Segment;
- vii. Rule 8(1)(f) and 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957;
- viii. SEBI Circulars No. SMDRP/POLICY/Cir-07/99 dated February 4, 2000 and Circulars No. SMD/Policy/Cir-12/2002 dated May 17, 2002; and

ix. SEBI Circular No. SMDRP/Policy/CIR-39/2001 dated July 18, 2001

The findings of the Enquiry Officer in respect of the allegations against the stock broker are considered and the findings in respect of the same are dealt with in the succeeding paragraphs.

4. It is alleged that the stock broker failed to pre-print serial numbers in the contract notes issued by it. The Enquiry Officer, after considering the submissions made before him, had found that the stock broker had contravened SEBI Circular dated August 5, 1996 as it was admitted by the stock broker that the contract notes do not bear pre-printed serial numbers. In the reply dated January 31, 2011 filed by the stock broker, the following was submitted in respect of the said charge:

- i. that it was previously functioning in a decentralized mode whereby the branches used to generate and issue the contract notes for their respective clients from the old stock of unused preprinted stationery of contract notes.
- ii. that the software at that point of time was operated in the decentralized mode which made it difficult to generate contract notes on a yearly basis using preprinted stationery.
- iii. feeling the need to overcome the aforesaid deficiencies and also to have a proper exercise on all its internal system controls and to keep in tune with SEBI Circular dated August 5, 1996, it migrated to the centralized software having a wide array of systems, support features, which also covered in its ambit the pre-printing of the contract notes serial numbers.
- iv. since April 1, 2004 the contract notes were generated on a yearly basis which complied with the regulatory requirements.
- v. under the circumstances, it was submitted that the alleged lapse in pre-printing of serial numbers in contract notes may be condoned.

5. I have considered the said submissions. SEBI, vide Circular dated August 5, 1996 had brought to the notice of the stock exchanges, certain common irregularities/deficiencies which included the irregularity in the contract notes of not containing pre-printed serial numbers. The said Circular also informed that serious view would be taken on the members (stock brokers), if such deficiencies are observed during the course of future inspections by SEBI or by stock exchanges. I note that the said Circular was issued in the year 1996 and the inspection of the

books of the stock broker in the present matter was conducted during the period - April 1, 2002 to March 31, 2004, much after the date of issuance of the said circular. The stock broker had a lot of time, subsequent to the aforesaid circular, at his disposal to engage systems for pre-printing the serial number in the contract notes. The submission that old unused stationery was used cannot be a convincing ground to take a lenient view or to condone the lapse. Further, as per the submissions of the stock broker, it was only from April 1, 2004, that the stock broker had upgraded its systems to enable it to pre-print serial numbers in the contract notes and to generate contract notes on a yearly basis which complied with the regulatory requirements. Therefore, I find that the stock broker had defaulted in pre-printing serial numbers in the contract notes issued by it during the relevant period, in contravention of the SEBI Circular dated August 5, 1996. I also find that the stock broker has been alleged to have issued unsigned contract notes in 7 instances, which again, is a contravention of the SEBI Circular dated August 5, 1996. The Enquiry Officer has observed that when all other details were present in the contract notes, it was difficult to believe why only the signatures of the authorized person were not present. It was also observed that no documentary evidence was present to substantiate the stock broker's submission that the instances have been noted and initialed by the authorized persons. Before me, it was submitted that utmost care was taken to ensure that the authorized persons sign all the contract notes. It was further submitted that the Auditors have pointed out 7 instances of alleged non-signing of contract notes for an investigation period spanning 2 years and the instances observed by the Auditors are few. The stock broker submitted that the carbon copy did not adequately reflect the signature on the original and that pay-in and pay-out obligations relating to the said contract notes have since been settled and the authorized person has since initialed them. The learned counsel contended that the alleged lapse in the carbon copies of the seven contract notes remaining illegible cannot be violative of the SEBI Circular dated August 5, 1996 and requested that the said lapse be considered leniently. SEBI Circular dated August 5, 1996 has also advised stock brokers to ensure that

the common irregularity of not signing the contract notes by authorised persons should not be found in the future inspections of SEBI. In this regard, I note that the allegation pertains to the absence of signatures in the carbon copies (The inspection mentioned that the signatures were not present in the contract notes whereas the stock broker submitted that the signatures were absent only in the carbon copies) of the contract notes in seven instances. The stock broker has submitted that the signatures were not present due to the poor quality carbon paper. Though, it was submitted that the same were duly noted and that the authorised person had initialled the same, the stock broker had failed to provide any proof to show that the contract notes were signed by authorised persons. The same therefore would be in contravention of the SEBI Circular dated August 5, 1996.

6. I find that the stock broker was also alleged to have charged brokerage in excess of the limits prescribed by NSE in four instances, which was in contravention of Regulation 3.6 of the Regulations of NSE Capital Market Segment. The Enquiry Officer was not satisfied with the submissions of the stock broker and found it guilty of the said provision. In this regard, the stock broker has submitted that the Auditors who conducted inspected had found only four instances where the brokerage was allegedly charged in excess. It was also submitted that the trade value was ₹8325/-, and the brokerage for the same was ₹286/-. According to the counsel, such trades related to penny stocks which were quoted below par and that the value of commission was less. He also submitted that the stock broker has now ensured that all its clients were charged brokerage within the specified guidelines related to the charging of brokerage. The aforesaid submissions of the stock broker in its reply lead me to conclude that the stock broker had charged excess commission in respect of the said instances and the same is in contravention of the aforesaid NSE Regulation.

7. The Enquiry Officer has found that the stock broker has contravened the SEBI Circular dated February 11, 1997 for the following lapses:

- i. the stock broker failed to obtain client agreement and registration forms from 483 out of 1835 active clients;
- ii. agreements with eight clients were entered into after executing transactions on their behalf; and
- iii. on checking the client database of 199 clients, deficiencies were observed in all 199 client agreements and registration forms.

As regards the allegation that the stock broker had failed to obtain client agreements and registration forms from 483 clients, it has submitted that:

- a) 281 clients from the said 483 clients are active and that all formalities relating to KYC norms have been completed.
- b) the remaining 202 client accounts were deactivated as the discrepancies observed in their KYC and the Member Client Agreements, either remained to be filled or necessary documents were to be obtained.
- c) Though, the Auditors have observed certain discrepancies, the KYC and the Agreement was always collected from the clients along with all the necessary and key information required like the photograph on the KYC and identity proof, agreement etc. duly signed by the client.
- d) to eliminate any discrepancies related to KYC & agreements, a process to evolve a new agreement, from time to time, which incorporated all the clauses considered mandatory by the regulatory authority and other clauses along with vital details like mentioning of Client email address etc considered important by us for our Internal Controls, was done.
- e) It had completed the exercise of collecting requisite details from each client individually which in its entirety covered the discrepancies mentioned in the Auditor's Report (the inspection report).

The submission of the stock broker that all requisite documents have already been obtained from such clients, does not weigh much in view of the findings of the inspection. The stock broker has submitted that it had deactivated the 202 client accounts as documents or information was not forthcoming from them. A stock broker is expected to obtain all the required documents at the time of enrolling a client and is also expected to execute a member-client agreement and to complete

other documentation. The stock broker has submitted that it had completed the exercise of collecting requisite details from each client individually which in its entirety covered the discrepancies mentioned in the inspection report. It does not require an inspection to find and point out such deficiencies to a stock broker. The SEBI Circular dated February 11, 1997 is very clear on this aspect. All such requirements have to be satisfied at the very moment a person is taken as a client. The stock broker has also been alleged to have executed member-client agreements with eight clients after entering into transactions on their behalf. The stock broker had submitted that due to inadvertence certain details remained to be filled in the agreements and after same was brought to its notice, it had promptly obtained the required details and incorporated them. It also undertook to be more careful in future and requested to condone the lapse. Before the Enquiry Officer, the stock broker had submitted that the agreement and registration form were not completed so the date of the agreement was put only after due completion of the agreement and registration form. The Enquiry Officer has observed that the stock broker had entered into transactions on behalf of the clients even before completing the required documentation. Considering the facts and circumstances and also the submissions of the stock broker, I have no reason to differ with the findings of the Enquiry Officer in respect of the said charge. With respect to the allegation that deficiencies were seen in the agreements and registration forms pertaining to 199 clients, the Enquiry Officer after taking note of the submission of the stock broker that it had taken care of the deficiencies, had observed that the deficiencies were substantial and held the stock broker guilty for the same. In respect of the same, the counsel had submitted that although discrepancies were noticed, the stock broker had always collected the required documents. The counsel also submitted that the stock broker had completed the exercise of collecting requisite details from each client individually, which in its entirety covers the discrepancies mentioned in the Auditors Report. It was also submitted that the said lapses were unintentional and few. Though, the stock broker submits that the discrepancies have been rectified post inspection, the fact that remains is that the

stock broker did not have in its possession, client agreements and registration forms for the 199 clients complete in all respect during the relevant period. The same would make the stock broker guilty of the said lapses. As the stock broker did not properly maintain the database of its clients, it has contravened the SEBI Circular dated February 11, 1997.

8. It has been alleged that the balance lying as on March 31, 2004 in various client accounts were adjusted with the account of VCK Investments Limited for which no client authorisation was taken for transferring the balance. It was stated that VCK Investments Limited is a group company in which directors (of the stock broker) are interested. In this regard, the Enquiry Officer had observed that the credit advice issued by VCK Investments Limited would not negate the allegation since the respective parties did not request the same and held that the stock broker had contravened the SEBI Circular dated November 18, 1993. In respect of the said allegation, the stock broker had submitted that the Enquiry Officer had accepted its contention in respect of the transfer of balances lying in the account of 11 clients to the account of its director, Mr. Hemal Kampani in view of the letter of authorization of the respective clients. According to the stock broker, the Enquiry Officer failed to appreciate that similar transfers were made to VCK Investments Limited, a group company, on the assumption of lack of evidence. The stock broker also submitted that VCK Investments Limited had issued a credit note to it on behalf of the same set of clients which was evident from the journal entry taken in their books and had annexed the copies of the relevant journal entries. It was also submitted that VCK Investments Limited did not derive any direct or indirect benefit from those entries and that transfers were affected only to the value of entry for the clients and was restricted to the extent of their debit/credit lying in their respective books. However, I find that for transfer of balance lying in various client accounts to that of VCK Investments Limited, the stock broker has not taken any authorisation from the respective clients and only a credit note was

issued to VCK Investments Limited. Therefore, the stock broker is liable for contravening the said charges.

9. The inspection had noticed that in respect of five settlements where deliveries were made in demat mode, in most of the cases at NSE and few instances at CSE, instead of giving deliveries to the clients/sub-broker, shares have been transferred to the beneficiary account of the stock broker. It was also alleged that the stock broker was not maintaining separate beneficiary account for the clients and such details of 175 instances at NSE and 9 instances at CSE, were given in an annexure. It was alleged that the delivery was made from the beneficiary account of the stock broker when those shares were sold by the clients/sub-brokers at a subsequent date. It was also alleged that in 38 instances in CSE and in one instance at NSE, there was a delay of upto three days from the due date in delivering the shares to the clients. As regards the said charge, the Enquiry Officer had observed the following:

"I do not find the explanations of the Noticee satisfactory and further, no scheme can be introduced by the Noticee which is contrary to the law or which can be used as a defense for non compliance with provisions of relevant Regulations. Therefore, by not maintaining separate accounts for client securities and own securities, the Noticee has violated provisions of the SEBI Circular No. SMD/SED/CIR/93/23321 dated Nov 18, 1993 which requires the broker to keep the securities of the clients and own securities in separate accounts. Further, the Noticee has not denied the delay and moreover, the Noticee has not provided any documentary evidence in support of his submissions in response to the allegation. Therefore, I don't find the Noticee's explanations satisfactory and find that the Noticee has violated provisions of the SEBI Circular No. SMDRP/Policy/Cir-05/2001 dated February 1, 2001." [Emphasis supplied]

The Enquiry Officer has therefore found the stock broker guilty of contravening the provisions of the SEBI Circular dated February 1, 2001. In the hearing it was submitted that the stock broker had devised a scheme whereby the clients could keep their securities with the stock broker and which would be kept in a separate account. Deliveries would be given by the stock broker from the said account. The stock broker also submitted that

"The above practice is adopted to facilitate our investors and to smoothen the settlement process so that the pay-in and pay-outs takes place without any hindrance and there is no auction which may cause harm to the interest of our investors.

Further many clients prefer to keep their shares/securities in our demat account without transferring the same to their own beneficiary account since they want to avoid frequent transfer of securities and/or since they want to avoid auctions in cases where the shares are sold by them immediately. The clients prefer to keep the securities as margin for future purchases. We therefore hold them in our demat account under authority from clients.

We hold the securities also in the event of the non receipt of the cheque from the clients against their pay in obligations. It may not be out of context here to mention that there has not been a singly instance of mis utilization of clients securities by us or complaint by a client of irregular delivery of securities to clients within the stipulated time....."

10. I have considered the said submissions of the stock broker. I have also perused SEBI Circulars dated November 18, 1993 and February 1, 2001. SEBI Circular dated November 18, 1993 *inter alia* provides that "It shall be compulsory for all Member brokers to keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities." The inspection team has observed that the stock broker has transferred the securities to its own beneficiary account, when the aforesaid circular clearly spells that the stock broker is mandated to maintain separate accounts for clients so as to distinguish securities of itself and those belonging to the clients. Though, the stock broker has submitted that the account to which the securities were credited was deemed to be the clients account, the same is not convincing as the stock broker had a separate clients' account to which it was duty bound to credit the securities of the clients. The stock broker has not kept on record any material to show that its account was not used for the same. The requirement to maintain clients account under the following heads was in force from November 18, 1993:

- " a. Securities received for sale or kept pending delivery in the market;
- b. Securities fully paid for, pending delivery to clients;

- c. Securities received for transfer or sent for transfer by the Member, in the name of client or his nominee(s);
- d. Securities that are fully paid for and are held in custody by the Member as security/margin etc. Proper authorization from client for the same shall be obtained by Member;
- e. Fully paid for client's securities registered in the name of Member, if any, towards margin requirements etc.;
- f. Securities given on Vyaj-badla. Member shall obtain authorization from clients for the same."

Therefore, any contravention or deviation in maintaining clients account would be a violation of the said SEBI Circular. A stock broker cannot, therefore, contend that his deviant process was to facilitate investors for their smooth trading in the securities market. The submission that ".....there has not been a singly instance of mis utilization of clients securities by us or complaint by a client of irregular delivery of securities to clients within the stipulated time" would not be a ground for absolving or showing any leniency to the stock broker of its deviation of the stipulations of the aforesaid SEBI Circular. Further, what is more striking about the 'scheme' of the stock broker is that, though, it was stated that the shares are kept in a separate account and claimed that the same was for smooth trading by the clients, still requires seven days notice to return the said shares to the concerned client. The stock broker has not made any submissions in respect of the charge of delay on the part of the stock broker in delivering securities to the respective clients in respect of the instances pointed out in the inspection. Thus, in view of the foregoing, I find that the stock broker has contravened the SEBI Circulars dated November 18, 1993 and February 1, 2001.

11. The stock broker has also been charged for
  - a) not redressing an investor complaint pending against from the year 2002, and
  - b) not maintaining a complaint register.

The aforesaid acts were alleged to be in contravention of Rule 4(e) of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Rules, 1992 (since rescinded) and Regulation 6.1.15 of the NSE's Capital Market Segment Regulations. As regards the charge of not redressing a complaint of one Shiba Prasad Maitra pending from the year 2002, the stock broker has submitted that the said complaint could not be redressed on account of several Company Secretaries joining and subsequently leaving the services. The stock broker while regretting for the delay, has stated that the said complaint was settled now as is evident as the complainant has not pursued the case. In terms of Rule 4(e) of the aforesaid Rules, one of the conditions for grant of certificate to a stock broker is that he shall take adequate steps for redressal of grievances of the investors within one month of the date of receipt of the complaint and keep SEBI informed of the details of the complaint received from investors. However, the stock broker has failed to abide by this mandate. Change of its personnel is not a valid ground of defence for not resolving the investor complaint for a fairly long period. Therefore, I find the stock broker is guilty of contravening Rule 4(e) of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Rules, 1992. With respect to the charge of not maintaining a complaint register, the stock broker submitted that the same was maintained in soft copy and that subsequent to the Audit, it had started keeping the Complaints Register in a hard copy also. No evidence to that effect was produced. The aforementioned NSE Regulation requires a trading member to keep and preserve a record of all written complaints of their constituents showing details as required therein. The Enquiry Officer has observed that the stock broker has not supported its submissions with any documentary evidence and therefore has held the stock broker liable for contravening the said provision. The stock broker is therefore held responsible for not abiding with the said stipulations of the stock exchange.

12. The Enquiry Officer has also found the stock broker guilty of not complying with the provisions of the SEBI Circular dated November 18, 1993, which

mandates a stock broker to maintain separate accounts to segregate its money and the money of its client. In respect of the said finding, the stock broker has *inter alia* submitted the following:

- i. that the total banking transactions done from the said 2 branches was negligible.
- ii. taking into consideration the total transactions done by it, the delay in opening of Client Account at the 2 Branches was totally unintentional.
- iii. the said accounts have since been opened on November 12, 2003 for Mecheda and on January 28, 2005 for Behrampur and that it would ensure that such discrepancies shall not occur in future.
- iv. there was no intent to misutilize funds from Clients Account and that the Expenditure Account was opened subsequently and prior to that all expenses were done from the Head Office only.
- v. that at no point of time of its business operations, it had drawn any funds belonging to the clients from the clients accounts. Whatever amount has been withdrawn from the client account for meeting small expenses like telephone expenses, electric bills, rent etc represented only brokerage income belonging to it and not to the clients and the amount of withdrawal has never exceeded the brokerage amount earned by us and lying accumulated in the client account in the bank.
- vi. these Branches have separate Expenditure Account now. It is maintaining separate Bank Accounts for clients and according to the nature of account, the same has been utilized. It has clear segregation of Clients money and its own money.
- vii. It has not derived any direct or indirect economic benefit from any of the observations made by the Investigating Auditor.
- viii. No investors has been harmed by our action, rather through this exercise, it has facilitated the clients.
- ix. that it had no intent or purpose to co-mingle moneys directly or indirectly and has strengthened its Internal Compliance systems so that such incidences do not recur.
- x. that there was not any intent to violate the provisions of SEBI Circular dated November 18, 1993 and the lapse may please be condoned.

The submissions in brief are that the delay in opening clients account in the two branches was unintentional and the stock broker had subsequently opened the accounts in those respective branches and further that whatever money was withdrawn from the clients account to meet the expenditure were only from the commission due to it from the client. In this regard, I note that the SEBI Circular dated November 18, 1993 provides that "It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and

their own money in a separate account...." Further, the said circular also stipulates the following:

" B] Obligation to pay money into "clients accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit....."

[Emphasis supplied]

It is the admission of the stock broker in his written statement that, as the transactions in the said two branches were negligible, there was a delay in opening clients account. Therefore, I conclude that by not opening clients account during the relevant period in the said branches, the stock broker has contravened the provisions of the aforesaid SEBI Circular.

13. The inspection had also noticed that in 1211 instances, payments aggregating to ₹319.64 lakh were received from and in 158 instances, payment aggregating to ₹112.46 lakh was made to various clients from its own bank account. Details of 50 such instances were also provided to the stock broker. Further, it was alleged that in 557 instances, cash aggregating to ₹114.29 lakh received from clients were not deposited in the clients account. The Enquiry Officer had found such acts in contravention of the SEBI Circular dated November 18, 1993. With respect to the alleged violations, the stock broker submitted that **the same were done** " on account of exigencies of business and to meet the pay in obligation on time, on specific requests from Clients, easy transfer facility on account of same bankers, etc., we were obligated to deposit and pay moneys received from/paid to the Clients from Own Account. Further, we have neither mis utilized the funds of Clients nor derived any direct or indirect benefit. However, we undertake that such a lapse shall not arise in the future." As regards the allegation of non-deposit of money in the clients account, the stock broker submitted that on most occasions, it had deposited cash received from clients in the clients account. It further submitted that cash deposited for the period 2002-2003 was ₹.34,52,236/-

and for the period 2003-2004, it was ₹55,31,679.48 and that those pertained to old outstanding dues from clients. It also submitted that in few cases referred in Annexure 19 of the Report, the amount specified pertained to recovery from doubtful clients for earlier years and that those may be equated to income for that year as these are recovery of bad debts and need not be deposited in Client Account. The stock broker also provided the following table as an example:

Date	Client Code	Client Name	Amount
29.04.2002	S0859	Sandeep Kr. Mundra	100000/-
22.05.2002	S0859	Sandeep Kr. Mundra	200000/-
05.10.2002	A0500	Asit Kumar Saha	50000/-
07.05.2003	S0859	Sandeep Kr. Mundra	100000/-
22.05.2003	N0121	Nidhi Services	100000/-
04.06.2003	N0121	Nidhi Services	100000/-
04.06.2003	N0121	Nidhi Services	100000/-
16.06.2003	S1255	Sanjay Jain	50000/-
17.07.2003	N0121	Nidhi Services	100000/-
29.01.2004	S1255	Sanjay Jain	50000/-

The stock broker further submitted that in the event it does not accept cash, the client may not pay up all and the account may go bad. It also submitted that it was its endeavour to educate clients for giving cheques only and that only in case of business exigencies, it was forced to accept cash. It therefore submitted that the said violation be treated only as a technical one and be condoned as the same has not been done intentionally. In view of such submissions, I find the stock broker of not adhering to the provisions of the said SEBI Circular.

14. The stock broker has also been alleged to have misused clients accounts in 250 instances. It was also alleged that on checking during the month of April 2002 and 2003 on one occasion the stock broker has made payment for trades in which it was a principal, from the client bank account. In settlement no. 2002076N, the payment obligation on self account was ₹1,33,472/- and receivable position on client account was ₹8,71,173/-. However, instead of transferring ₹1,33,472/- from self account to the settlement account, the stock broker had transferred ₹8,50,000/- from settlement account to self account and ₹5,40,000/- was

transferred from client account to self account. It was therefore alleged that the payment obligation of ₹1,33,472/- in the self account was met from the client account. In respect of the said allegation, the stock broker made the following submissions:

"It is stated (that) clients have running account with us. It is humbly submitted that credit in a particular settlement does not imply that on that particular date, the client has a said sum due from us in the payout as the client trades continuously and there may be a prior debit in the account which amount may be more than the credit in the account.

For the sake of convenience we quote the following three examples of April 23, 2002, when the ledger account of the under mentioned clients include:

Atul Gandhi - Rs.3.65 lacs debit

Kailash Kanoi - Rs.0.10 lacs debit

Ashish Kumar Dutta - Rs.1.14 lacs debit.

We state that on any given date, the working capital which is contributed by us on account of various clients is very large and the sum of Rs.44,588/- wrongly observed by the Auditor for Settlement No.2002076 is not at all material with respect to the working capital infused for clients with running accounts.

Further, in all such instances no damage is caused to any of our Client of any type i.e. neither any auction on client's sell transaction nor any non delivery. Further, you may appreciate that there are no complaints from the clients in this behalf."

Similar submissions were made by the stock broker before the Enquiry Officer and the Enquiry Officer having considered the same had observed that the stock broker had not substantiated its reply with any documentary evidence and therefore found the stock broker guilty of contravening the SEBI Circular dated November 18, 1993. The allegation is that the stock broker had utilised the money from the settlement account to meet the payment obligations of its account. In this regard, though the stock broker has submitted that there may be a prior debit in the account which amount may be more than the credit in the account and has also cited the debit balances of few of its clients on a particular day, I am unable to consider the same in the absence of specific supporting documents. Therefore, no benefit could be afforded to the stock broker and is found to have contravened SEBI Circular dated November 18, 1993.

15. The stock broker has been alleged of not maintaining records and books of account as necessary to distinguish client's securities from its own. It was also alleged that the stock broker held the shares of clients in its beneficiary account and was not maintaining record of securities that were fully paid for and are held in the custody by the stock broker as security margin. In respect of this charge also, the Enquiry Officer had found the stock broker guilty of contravening the provisions of SEBI Circular dated November 18, 1993. In respect of the said charge, the stock broker has *inter alia* submitted the following:

- i. that it has on record authority letters from the concerned clients whose shares were used in its favour for pay in obligation
- ii. that it had enclosed some authority letters (Exhibit F of its reply), wherein clients whose shares were used for pay in obligation of other clients
- iii. it had undertaken appropriate measures to ensure proper compliance at all levels of operations to ensure proper compliance of all Circulars, Notifications, Rules and Regulations etc., issued by the Exchanges and Authorities
- iv. it had appointed an independent auditor for Internal Audit/External Audit as per Rules/Regulations of the Exchange
- v. it shall be more vigilant, cautious and careful in all its future dealings and transactions and will maintain highest standard of professionalism in all our business transactions
- vi. that when separate Client Beneficiary DP Account for NSE and CSE are being maintained, there are some instances wherein clients buy at one exchange and sell in other exchange. Under such circumstances, there appears to be a human error in an entering credit/debit in Share Register
- vii. that as per advice of its software vendor, it had merged client beneficiary account and therefore there is no scope of such a lapse
- viii. it denied making any entry in Register of Securities with the intention of depicting wrong balance of securities in alleged client account and stated that alleged entries were passed by mistake and there was not any intention to falsify the available balance of securities.

No submissions were made with regard to the allegation that the stock broker had failed to maintain records and books of accounts as necessary to distinguish clients' securities from its own. Therefore, I find the stock broker liable for the said lapse. [It is submitted that it had Authority Letters from the concerned clients

whose shares were used in their favour for the said use of securities for pay in obligation and Authority letters of clients whose shares were used for pay in obligation of other clients] In this regard, I also note the submission of the stock broker that it shall be more vigilant, cautious and careful in all its future dealings and transactions and will maintain highest standard of professionalism in all our business transactions

16. The stock broker has been charged of having accommodated its clients to the tune of ₹47.69 lakhs. In respect of the said allegation, the Enquiry Officer has observed the following:

"Firstly, the list annexed as Annexure-22 does not include the name of Paresh Ajmera. Anyhow, I am not satisfied with the explanations of the Noticee and also find that the Noticee has accepted that temporary accommodations were adjusted within the year. Therefore, I find that **by providing accommodation to clients and adjusting the same against the subsequent transactions/received back on various dates, the Noticee stands in violation of the provisions of Rule 8(1)(f) and 8(3)(f) of Securities Contracts (Regulation) Rules, 1957 which prohibits a member of a stock exchange from being engaged as principal or employee in any business other than that of securities except as a broker or agent not involving personal financial liability.**" [Emphasis supplied]

In its reply, the stock broker has submitted that in the report sent to it by M/s.G.P. Agarwal & Co., on September 14, 2004, the name of Paresh Ajmera appears in Annexure 25, and that in the Report sent to it by SEBI on November 8, 2004 the name of Paresh Ajmera did not appear. According to the stock broker, the same was the reason it had made reference to the said individual in its reply to the Enquiry Officer. The stock broker had submitted that there are only four instances cited in the Enquiry Report wherein a lapse of such type has occurred. According to the stock broker, it had more than 14,000 registered clients with and that there is a fair and reasonable system in place to serve all such Clients with the Compliance of all rules/regulations of exchange. The stock broker has undertaken to be more vigilant, cautious and careful in all its future dealings and transactions and that it would maintain highest standard of professionalism in all its business transactions and assured that no such instance of accommodation of clients will

recur again in future. It requested SEBI to condone the violation of Rule 8(1)(f) and Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957. The allegation against the stock broker is that it had accommodated its clients to the tune of ₹47.69 lakhs. Since the said transactions involved a personal financial liability on the stock broker, the same is not in tune with the prescriptions of Rule 8(1)(f) and 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957.

17. It has also been alleged that though margin had been taken in the form of cash as well as shares and securities, the details of the shares and securities taken as margin were not made available to the inspecting authority. Further, no details of shares and securities held in client margin account were made available to the inspecting authority. It was found that in 42 instances, there was a shortfall in collection of margin from the clients. It was also alleged that in 13 instances an aggregate amount of ₹12,73,000/- was credited to the client margin account by debiting the respective client account on April 1, 2003. It was noted that the debit in those client accounts was more than the amounts of margin so debited throughout the year upto March 31, 2004 on which date the entry passed on April 1, 2003 was reversed. Therefore, it was alleged that no margin was actually collected. Further, on checking the margin requirement for quarter ended June 2003 and March 2004, the inspecting authority found that out of 13 instances, in respect of one of those clients, there was a shortfall in collection of margin without considering the amount of ₹3,50,000/- credited to client margin account by debiting the account of the said client. The Enquiry Officer, after considering the submissions of the stock broker, had concluded that the stock broker contravened SEBI Circulars dated May 17, 2002 and February 4, 2000. Both the Circulars deal with margin collection by stock brokers from their clients. The stock broker has submitted that Annexure 23 refers to the clients, namely, Swapan Kumar Dutta, HSBC Securities & Co., SMK Securities Private Limited, Ashok Malik and Rashmi Chakraborty. According to it, all the said clients have entered into an agreement with it and the extract of same as given by the stock broker is as follows:

"For curtailment of your trading Cost VCK Share & Stock Broking Services Ltd. have introduced a very special scheme in trading activity. The scheme is:

1. Instead of taking delivery of your shares, you can keep it with VCK which will be kept in an a/c. specially designed for the purpose.
2. When you sell your shares, we will automatically deliver the securities on your behalf and you will be saved from the harass of issuing instructions.
3. You can take delivery of your entire shares at any given point of time by giving a 7 days notice to VCK.
4. You will be entitled to a reimbursement of all dividends, bonus, rights etc on your securities lying with us.
5. Finally your securities lying with us will be treated as Collateral/Margin for your trading exposure/limit (conditions apply"

It is the submission of the stock broker that it had fully collected margin and there was no shortfall. According to the stock broker, the scheme introduced by it has been designed in a manner for which under no circumstances there is a default in collection of margin and is in the interest of investors in general. The stock broker has also submitted that it had taken additional margin from clients to minimize the risk by way of journal entries so that shares are not delivered to the said clients unless they pay the dues in totality and that the said journal entries are a part of risk management and surveillance of clients. It also submitted that the collaterals (shares) collected in the Beneficiary Account against the margin requirements of the respective Clients were not considered. Though, the stock broker had made the aforesaid submission, it failed to support the same with evidentiary documents. Therefore, I am unable to afford any benefit to the stock brokers on the basis of only the said submissions. Accordingly, I find that the stock broker has failed to collect margins for the case that were identified and therefore the stock broker becomes liable for having contravened the SEBI Circulars dated May 17, 2002 and February 4, 2000.

18. The stock broker has also been alleged of not using correct client codes in large number of transactions. The inspection has identified 545 instances in 3 of the 40 settlements where correct client codes were not used. It was also alleged that the stock broker had, in almost all the instances, used the code "V" while entering transactions on self account on the trading system whereas its correct client code is "V0080". The Enquiry Officer has found the stock broker guilty of contravening SEBI Circular dated July 18, 2001. The said circular requires stock brokers to use unique client codes. Before me, it was submitted that the code "V" denotes transaction done on account of self trades and for fast execution of trades, it was not possible to enter the full client code. It was submitted that in some cases, there was punching error and that the same was detected by it at the time of generation of the contracts and the same could not be reported to the stock exchange within the stipulated time. The stock broker also submitted that in some cases, while using CTCL Terminal, the dealers inadvertently failed to delete the "retain" clients option and the same was detected after the market hours and the same could not be corrected within the due time. While the stock broker regretted the lapses, it stated that all the settlement has taken place smoothly and no objection has been raised by the investors. It was the submission by the stock broker that the violations, if any, of SEBI Circular dated July 18, 2001 are unintentional and requested that the same be condoned. I have considered the said submissions of the stock broker. The submission that for fast execution of trades it was not possible to enter the full client code, can never be accepted. The relevant portion of SEBI Circular dated July 18, 2001 is reproduced below:

"Pursuant to the discussions in the meeting of the Group on Risk Management Systems for the Equity Markets held on May 02, 2001, it was decided that every investor should have a unique ID.

In this regard, it will be mandatory for all brokers to use unique client codes for all clients. For this purpose, brokers shall collect and maintain in their back office the Permanent Account Number (PAN) allotted by Income Tax Department for all their clients. Sub-brokers will similarly maintain for their clients....."

The reason for mandating the use of correct client code is to know the identity of the client who had executed a particular transaction. Therefore, the submissions made by the stock broker are not convincing. I, therefore hold the stock broker guilty of contravening the provisions of SEBI Circular dated July 18, 2001.

19. It has also been alleged that in 3 of the 40 settlements, there were 31 instances where the transactions were entered into under various client codes while entering into transactions on trading system whereas in the sauda register the sauda was recorded on self account. Further, it is also alleged that in 395 instances, the transactions were entered with a particular client code on the trading system whereas in the sauda register, the sauda was entered under some other client codes. On this count also, the Enquiry Officer has found the stock broker guilty of contravening the provisions of SEBI Circular dated July 18, 2001, which mandates the usage of unique client codes for all clients. The stock broker has submitted that in few cases where the sauda was not confirmed by the client, the same had to be transferred to self account. The said submission lacks merit. Stock brokers are expected to place orders only after receipt of instructions from the concerned clients. Therefore, it is very difficult to comprehend as to how the trades were not confirmed by the clients which made the stock broker to transfer the same to his account. The stock broker has also changed the codes after the execution of the trades. The said practices have to be detested. Therefore, the stock broker has contravened the SEBI Circular dated July 18, 2001 in view of the deviations observed above.

20. Having arrived at the findings in respect of the charges levelled against the stock broker, the next step would be to decide on the penalty that needs to be imposed on the stock broker. The Enquiry Officer has recommended that the stock broker's certificate of registration as a stock broker of CSE, NSE, OTCEI and ASE be suspended for a period of one month. I also note the submission that the violations happened in 2002 and that in similar matters, the Hon'ble Securities

Appellate Tribunal and SEBI has taken lenient view while imposing penalty. The stock broker further submitted that it had not aided and abetted any sort of price rigging of the shares and that it had never created any false market. It was further stated that it had caused any disturbance in the smooth functioning and orderly development of the securities market. Having considered the charges and the submissions of the stock broker and also the corrections/rectification of its systems/processes, I find that the present enquiry could be disposed of as ordered hereinbelow.

21. In view of the foregoing, I, in exercise of the powers conferred upon me under Regulation 28 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby warn the stock broker, VCK Share & Stock Broking Services Limited for the irregularities observed above and advice it to strictly comply with all the rules and regulations that govern its activities as a stock broker. Any deviation of the same, in future, would be viewed seriously.

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

**PLACE: MUMBAI**  
**DATE: JULY 18, 2011**