BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA [ADJUDICATION ORDER NO. EAD-2/AO/95/2012]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against

M/s Pioneer TCP Stock Brokers Limited
(PAN No. AABCT2172Q)

In the matter of

Pioneer TCP Stock Brokers Limited (In the shares of ATN International Limited, Eonour Technologies Limited, Bhuvan Industries Limited, Hotline Glass Limited and Alka Spinners Limited)

Background

1. The Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation into the alleged irregularity in the matter of Pioneer TCP Stock Brokers Limited (hereinafter referred to as "PTCP" or the "Noticee") during the period from April 01, 2003 to January 31, 2004 (hereinafter referred to as 'investigation period') into the alleged irregularities in the trading and dealings in the shares of ATN International Limited, Eonour Technologies Limited, Bhuvan Tripura Industries Limited, Hotline Glass Limited and Alka Spinners Limited. On an analysis of the trade log and order log data for the abovementioned scrips for the period of investigation, the investigation did not find any specific pattern of manipulative concentration against PTCP. However, based on the

observation from the ledgers of the clients, it is alleged that the Noticee was charging on regular basis some IML/ID charges to its clients who were not registered as sub-broker of the Noticee, thereby allegedly violated the provisions of Regulation 26(xix) of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the "Broker Regulations") and Clauses A (1), (2) and (5) of the code of conduct for stock brokers under Schedule II read with Regulation 7 of the Broker Regulations.

2. SEBI has therefore, initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "Act") against the Noticee to inquire and adjudge the alleged violations of the provisions of Regulation 26(xix) of the Broker Regulations and Clauses A(1), (2) and (5) of the code of conduct for stock brokers under Schedule II read with Regulation 7 of the Broker Regulations and SEBI circular No. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001.

Appointment of Adjudicating Officer

3. SEBI vide order dated March 31, 2011 appointed Shri Satya Ranjan Prasad as the Adjudicating Officer (AO) to inquire into and adjudge under Section 15 I of the Act for the alleged violation of the Noticee as mentioned above. Consequent upon transfer of Shri Satya Ranjan Prasad the undersigned has been appointed as the AO vide order dated May 22, 2012.

Show Cause Notice, Reply and Personal Hearing

4. A show cause notice dated July 18, 2011 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules,

1995 (Rules) to show cause as to why an inquiry should not be held and penalty should not be imposed on them under section 15HB of the SEBI Act for the alleged violation of the provisions of Regulation 26(xix) of the Broker Regulations and Clauses A(1), (2) and (5) of the code of conduct for stock brokers under Schedule II read with Regulation 7 of the Broker Regulations and SEBI circular No. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001.

5. The Noticee submitted its reply to the SCN vide letter dated November 17, 2011. In order to conduct inquiry an opportunity of hearing was granted to the Noticee on December 13, 2011. The Noticee failed to appear for the hearing. However, in the interest of natural justice another opportunity of hearing was provided to the Noticee on June 25, 2012. Mr. Sumer Chand Jain, authorized representative appeared on behalf of the Noticee on the said date and reiterated the submissions made vide letter dated November 17, 2011. The Noticee inter alia submitted that they deny providing trading terminals at clients' offices and had only provided dedicated trading terminals to them which were located at the Noticee's office only. Further, they submitted the letter of one of such client dated March 23, 2011.

Consideration of Issues, Evidence and Findings

6. I have carefully perused the charges made against the Noticee as mentioned in the SCN, written and oral submissions and the documents available on record. In the instant matter the following issues arise for consideration and determination:

a. Whether the Noticee had violated the provisions of Regulation 26(xix) of the Broker Regulations and Clauses A(1), (2) and (5) of the

code of conduct for stock brokers under Schedule II read with Regulation 7 of the Broker Regulations and SEBI circular No. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001

b. Whether the Noticee is liable for monetary penalty prescribed under Section 15HB of the SEBI Act for the aforesaid violation?

c. If yes, what should be the quantum of monetary penalty?

7. Before proceeding, I would like to refer to the relevant provisions of the Broker Regulations which reads as under:

Liability for monetary penalty.

26. *A stock broker or sub-broker shall be liable for monetary penalty in respect of the following violations, namely -*

....

(xix) Extending use of trading terminal to any unauthorized person or place;

Stock Brokers to abide by Code of Conduct.

7. The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II.

A. General.

(1) Integrity: A stock broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his businesses.

(2)Exercise of due skill and care: A stock broker shall act with due skill, care and diligence in the conduct of all his business.

....

(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 Exchange from time to time as may be applicable to him.

8. It was alleged in the SCN that the Noticee was realizing some IML/ID charges from some of it clients. The allegation is based on the observation from the financial ledgers of some of the clients of the Noticee viz. Bishambar Das Mahavir Prasad, Jai Gopal & Co., KLG Securities, Moongipa Securities and RS Capital Services etc.

9. I observed that Shri D.D. Goyal, Director of PTCP had made his statement before the investigating authority that some of their clients were provided dealer terminal facility to speed up execution of their trades from a dedicated ID and that the charges were levied towards this facility. I find from the copy of the financial ledgers of the client Bishambar Das Mahavir Prasad enclosed with the SCN to the Noticee that the client had made payment of Rs 1000 every month from September 2003 to February 2004 as IML/ID charges to PTCP.

10. I find that there are contradictions in the statements made by the client Bishamber Das Mahavir Prasad before the investigating authority. The client has at one hand submitted to the investigating authority that "*these charges are for the use of the BSE terminal being given to us at our office address 7/3A, Ansari Road, Daryaganj, New Delhi-110002*" with regard to the IML/ID charges being levied by PTCP in the account of the client. Whereas vide their reply dated March 23, 2011, the client has submitted that PTCP had provided the facility of one dealer and dedicated terminal at the office of PTCP.

11. PTCP in its reply dated November 17, 2011 has submitted that the statements of Shri D.D. Goyal has been misconstrued and unfounded inferences have been drawn from the same without any corroborating material. SCN has been based on the premise that the said terminal was located at the place of the client and that the said client acted as an unregistered sub-broker without any corroborating and specific material. Further, they submitted a copy of the letter dated March 23, 2011 sent to the Investigating authority by the client Bishamber Das Mahavir Prasad, wherein, the client has stated that "*For BSE, TCP Stock Brokers Ltd. provided us the facility of one dealer and dedicated terminal at their office for fast execution of trades. Charges were made for this additional facility*". In this context, I note the observation of the investigating authority, "In view of the above, it is difficult to conclude that M/s Bishamber Das acted as unregistered sub- broker of TCP…" Since the investigation has been unable to conclude that the client Bishamber Das has acted as an unregistered sub-broker of PTCP, I find that there is insufficient evidence to hold that PTCP has granted terminals to unregistered sub- broker/ client's place. In my view, the financial ledgers of the clients alone cannot be a conclusive evidence to hold that PTCP has granted terminals to unregistered Sub brokers/clients' place.

12. Therefore, in view of the above mitigating factors I am inclined to give the benefit of doubt to the Noticee and conclude that the charges leveled against the Noticee is not established beyond doubt and this is not a fit case for imposition of monetary penalty under Section 15 HB of the SEBI Act.

Order:

13. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I conclude that as the alleged violations of providing trading terminals at the office address of its clients, who acted as unregistered sub-brokers is not established beyond doubt, I hereby exonerate PTCP. Accordingly the matter is disposed of.

14. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: November 05, 2012 **P K KURIACHEN**

Place: Mumbai **ADJUDICATING OFFICER**