BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. EAD/BD/BM/2019-20 /5286

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 & UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of

ASE Capital Markets Limited (Now ACML Capital Markets Limited)
[CIN U67120GJ2000PLC037431]
Registered Office
Kamdhenu Complex
Opp: Sahajanand College
Panjara Pole, Ambawadi
Ahmedabad – 380015

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had conducted an inspection of the books of accounts and other records of ASE Capital Markets Ltd. (Now ACML Capital Markets Limited) (hereinafter referred to as 'Noticee'), a SEBI registered stock broker in the manner required under the (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as "Stock Brokers Regulations"), to check its compliance with the provisions of the Securities Laws; Securities Contracts (Regulation) Act, 1956; SEBI Act, 1992 (hereinafter referred to as 'SEBI Act') and the directions or Circulars, Bye-laws, Rules or Regulations issued by SEBI and the Stock Exchanges. The period of inspection was from January 01, 2013 to December 31, 2014 (hereinafter referred to as 'Inspection Period').

2. Based on the findings of the inspection, SEBI initiated Adjudication Proceedings against the Noticee under the provisions of Section 15HB of the SEBI Act and Section 23 H of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as SCRA 1956) for the alleged violation of the following provisions:

a) SEBI Circular dated December 3, 2009 on dealings between a client and a stock brokers – trading members included;

b) Stock Exchange Circulars ref. no. NSE/INSP/13606 dated December 3, 2009, Clarification circulars NSE/INSP/14048 dated February 3, 2010 and NSE/INSP/21651 dated September 7, 2012;

c) SEBI circular ref. no. ISD/CIR/RR/AML/1/06 dated January 18, 2006;

d) SEBI Circular ref. no. CIR/MIRSD/1/2014 dated March 12, 2014;

e) SEBI Master Circular ref. no. CIR/ISD/AML/3/2010 dated December 31, 2010;

f) Rule 8 (1) (f) and 8 (3) (f) of SCRR, 1957, SEBI Circulars ref. no., SMD/POLICY/Cir-6/97 dated May 7, 1997 and NSE Circular (Download ref. no. NSE/INSP/20638 dated April 26, 2012;

g) SEBI Circular ref. no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001;

h) Clause A (1), A (2) and A (5) of the code of Conduct specified under Schedule II read with Regulation 9 (f) of the Stock Brokers Regulations and

i) Regulation 26 (iii), (xv), (xvi) (xix) and (xx) of the Stock Brokers Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. I have been appointed as the Adjudicating Officer vide order dated May 17, 2017 to inquire into and adjudge, under the provisions of Section 15HB of the SEBI Act and 23 H of SCRA, the aforesaid violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/BJD/NJMR/913/1/2018 dated January 09, 2018 was issued to the Noticee under Rule 4 (1) of SEBI(Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer)Rules, 1995 and Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer)Rules, 2005 (hereinafter referred to as Adjudicating Rules) to show cause as to why an inquiry be not held against it and penalty be not imposed under Section 15 HB of SEBI Act and Section 23 H of SCRA against the Noticee for the violation alleged to have been committed by it.

5. Further, pursuant to communique modified on June 11, 2018, the change in inspection period from earlier one (January 01, 2013 to November 21, 2013) to the inspection period from January 01, 2013 to December 31, 2014 for ACML was informed to the Noticee vide, a supplementary SCN dated July 11, 2019.

6. Noticee vide letter dated January 30, 2018 submitted that there were two separate and independent inspection proceedings and reports for the Noticee and sub-broker Shaswat Stock Brokers Pvt. Ltd. Therefore, there must be two different orders in the matter. Vide e-mail dated February 05, 2018 the Noticee was informed that based on the material facts and documents relied upon in the current Adjudication proceedings, the matter shall be dealt appropriately.

7. Noticee, vide letter dated March 09, 2018, filed the detail reply to the SCN denying the violations alleged against it.

8. In the interest of natural justice, vide e-mail dated April 10, 2018, the Noticee was provided with an opportunity of personal hearing on April

19, 2018. The Noticee, vide letter dated April 17, 2018 sought for inspection of documents. Vide e-mail dated May 21, 2018 the inspection was allowed to the Noticee on June 11, 2018. The Noticee vide its reply dated May 22, 2018 stated that it would be befitting for it to attend the inspection of documents only subsequent to having received the documents sought by it. Vide letter dated June 07, 2018 the Noticee was informed that all the documents that have been relied upon had already been provided to it. Vide, letter dated June 07, 2018, the documents relied upon in the matter during the issuance of SCN were once again being provided to the Noticee in a CD. Inspection of the documents also was allowed to the Noticee and the same was carried out by the authorized representatives of the Noticee on June 11, 2018. Vide letter dated August 31, 2018 the Noticee was also provided with the copy of the final inspection report carried out by SEBI and also the NSE Inspection report for the financial year 2013-14 and financial year 2014-15. Further, vide letter dated July 11, 2019 the rectified copy of communique dated June 11, 2018 with a change in investigation period from earlier one(January 01, 2013 to November 21, 2013) to the investigation period from January 01, 2013 to December 31, 2014 was provided to the Noticee. In this regard, all the annexure pertaining to the investigation period from January 01, 2013 to December 31, 2014 had already been provided to the Noticee along with the SCN. Further, vide letter dated August 19, 2019 the hearing was scheduled on August 29, 2019. However, Noticee vide letter dated August 23, 2019 stated that on account of Paryusan, its corporate representative was not available and therefore requested to arrange hearing any time after September 21, 2019 and also requested to arrange to send the documents sought vide its reply dated July 26, 2019. Accordingly, vide e-mail dated September 17, 2019 it was informed to the Noticee that all the relevant documents relied upon in the matter have already been provided to it and the hearing was next scheduled on

September 24, 2019. However, the Noticee failed to attend the hearing on September 24, 2019. Further, Vide letter dated September 24, 2019 raised certain issues which had been addressed vide email dated September 25, 2019 as under:

Sr.	Issues	Contents	Our comments
1	Annexure G of SCN	Inspection reports had to be signed by officers concerned	Covering letter signed by the concerned officer forwarding the reports has already been received by Noticee
2	Annexure A of SCN	Appointment of AO	Rectified Appointment letter dated June 11, 2018 with SSCN already received by the Noticee
3	Cir/MIRSD/1/2014 dated March 12, 2014	Reply of Noticee during inspection – We will be communicating to FIU-IND as early as possible	Due to failure of Noticee to communicate to FIU-IND, SEBI Cir ISD/CIR/RR AML/1/08 dated Jan 18, 2006 has been violated
4	Annexure B of SCN	Inspection by two group of officers-separate findings for two entities	As per facts findings. Since the communique as an annexure is the part of annexure, Noticees can reply relating to the issue of both the penal provisions, i.e. Section 15 HB of SEBI Act and Section 23 H of SCRA.

9. Further in the same e-mail dated September 25, 2019 it was also replied to the Noticee that all the issues pointed by you shall also be addressed and dealt with in the hearing which is scheduled at 11:30 a.m. on September 30, 2019. Further, vide e-mail dated October 01, 2019 the Noticee's sought adjournment of hearing scheduled on September 30, 2019 was acceded to and hearing was further scheduled on October 11, 2019. However, Noticee vide letter dated October 03, 2019 once again applied the delay tactics and stated that due to forthcoming Annual General Meeting (AGM), festive season etc. it can be available for hearing only after November 10, 2019 subject to its own satisfaction on availability of all documents desired by it.

10. It was observed from the above letter of the Noticee that it had again requested to postpone the hearing scheduled on October 11, 2019 seeking additional time for filing its reply and personal hearing in the matter. However, it was noted from records that the Noticee had been granted sufficient opportunities for hearing and for submitting its reply in the matter. It appeared from the conduct of the Noticee that it was writing the above letters to delay the instant proceedings. I note that Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Dave Harihar Kirtibhai Vs SEBI (Appeal No. 181 of 214 dated December 19, 2014)** observed as under:

"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least…."

11. I am of the view that all the documents relied upon have been served on the Noticee and the sufficient opportunities of hearing has been provided to the Noticee and thereby the principles of natural justice have been followed up. I am of the opinion that proceeding further in the matter does not cause any prejudice to the Noticee and therefore, I am proceedings in the matter on the basis of the detail reply dated March 09, 2018 filed by the Noticee and material available on record. .

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

12. The issues that arise for consideration are as under:

A.) Whether the Noticee has violated the Circulars as under:

(a) SEBI Circular dated December 3, 2009 on dealings between a client and a stock brokers – trading members included;

b) Stock Exchange Circulars ref. no., NSE/INSP/13606 dated December 3, 2009, Clarification circulars NSE/INSP/14048 dated February 3, 2010 and NSE/INSP/21651 dated September 7, 2012;

c) SEBI circular ref. no. ISD/CIR/RR/AML/1/06 dated January 18, 2006;

d) SEBI Circular ref. no. CIR/MIRSD/1/2014 dated March 12, 2014;

e) SEBI Master Circular ref. no. CIR/ISD/AML/3/2010 dated December 31, 2010;

f) Rule 8 (1) (f) and 8 (3) (f) of SCRR, 1957, SEBI Circulars ref. no., SMD/POLICY/Cir-6/97 dated May 7, 1997 and NSE Circular (Download ref. no. NSE/INSP/20638 dated April 26, 2012;

g) SEBI Circular ref. no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001;

h) Clause A (1), A (2) and A (5) of the code of Conduct specified under Schedule II read with Regulation 9 (f) of the Stock Brokers Regulations and

i) Regulation 26 (iii), (xv), (xvi) (xix) and (xx) of the Stock Brokers Regulations.

B.) Does the violation, if any, attract monetary penalty under Sections 15 HB of SEBI Act and Section 23 H of SCRA?

C.) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act and Section 23 J of SCRA?

Non-implemented the provisions of running account settlement

13. SEBI vide Circular ref. no., SEBI/MIRSD/SE/Cir-19/2009 dated December 3, 2009 mandated all the stock brokers to implement the provisions of the circular which inter-alia includes running account settlement (i.e., settlement of funds and securities of its clients, at least once in a calendar quarter or month), by June 30, 2010. However, it is noted that Noticee has implemented the provisions of running account settlement with effect from April 1, 2012 i.e., with a delay of around 18 months.

14. On the allegation that the company has not put in place the system for 18 months, the Noticee submitted as under:

"the company purchased back office software "TechExcel" during the year 2010 to implement the requisition of the said SEBI circular. However, considering the widely known practical difficulties in its implementation and ambiguity in interpretation various clarificatory circulars from SEBI as well as Exchanges were being issued and finally the matter rested vide issuance of NSE FAQ vide circular no. 144/2012 download reference no. NSE/INSP/21651 dated September 07, 2012.Therefore, this being the period of evaluation backed by widely known, prevailed and acknowledged difficulties in its implementation by the market participants and various changes were taking place in its implementation from time to time, it is not gainsaying to view, observe and allege that there was no system in place for 18 months."

15. I note from the submission that Noticee admittedly failed to apply the circular on time due to insufficiency of the knowledge of technology. The Noticee had the scope to take up the matter with stock exchange and to SEBI for guidance in case of lack of understanding in terms of the circular. However, the Noticee failed to do the same and complied with the provisions of running account settlement belatedly by two years. In view of the same, I am of the opinion that the Noticee has failed to comply with the mandated provisions of the Circular.

Non-Settlement of Credit balance

16. I find from the trail balance for the dates June 30, 2013, September 30, 2013, December 31, 2013, March 31, 2014, June 30, 2014, September 30, 2014 and December 31, 2014, that the credit balances for the following clients who have not traded during the quarter, lying unchanged during the quarter, which demonstrates that the clients' funds have not been settled in the following cases:

From Quarter	To Quarter	Total no of clients having credit balance unchanged during the quarter - no of clients not settled	Total value of credit balance unchanged during the quarter (in ₹) - value of amount not settled
30/06/2013	30/09/2013	422	4150635.44
30/09/2013	31/12/2013	195	8599399
31/12/2013	31/03/2014	8	1906628.00
31/03/2014	30/06/2014	5	1813779.78
30/06/2014	30/09/2014	8	1429226.10
30/09/2014	31/12/2014	4	1355040.81

17. I note from the above table, that the instances of clients who have not traded during the quarter and credit balance lying unchanged which were not settled.

18. On charges of failure to settle the account the Noticee has submitted as under:

-"As regards the process of running account settlement is concerned the settlement is done through Tech excel software for all clients wherein the fund/securities balances and their retention amount are calculated automatically.

- The excess amount of funds and securities after adjusting for retention is calculated on daily basis from the starting date of the quarter. The statement of accounts are sent to the clients within 2 days of the settlement dates. No complaints were received from the clients in FY 2013-14 and FY 2014-15 with regard to unauthorized trading.

- Therefore, it is clearly signifying a substantial and material fact behind prescribing the intent of SEBI circular dated December 03, 2009 to avoid unauthorized trading is established and justified in its letter and spirit by the company.

-Surprisingly, SEBI circular dated December 03, 2009 stipulates the period of settlement of running account once in calendar quarter I month and does not stipulate a period of 90 days between the first settlement and second settlement. Therefore the observations made, findings derived and consequent allegations leveled with respect to finding a gap of more than 90 days as can be gathered from the contents of 'Annexure D' to the Show Cause Notice are contrary to the requisition of SEBI circular dated December 03, 2009.Under the circumstances, no violation of the alleged circular can be invited against the company and therefore no enquiry shall conduct for the alleged violation against the company that there was no requisition to find out gap of 90 days.

19. The intent of SEBI circular dated December 3, 2009 is that the balances of clients were to be settled every quarter to avoid unauthorized trading, reducing idle client balances with stock broker etc. On examination of date of settlement in respect of certain sample clients for each quarter of the inspection period, it is found that there are many instances, wherein the gap between two settlements dates were more than 90 days.

20. Therefore, I am of the opinion that the submission of the Noticee cannot be accepted and therefore it is concluded that the Noticee had violated the provisions of SEBI Circular dated December 3, 2009, NSE Circulars ref. no., NSE/INSP/13606 dated December 3, 2009, Clarification circulars NSE/INSP/14048 dated February 3, 2010 and NSE/INSP/21651 dated September 7, 2012.

Prevention of Money-laundering

21. Before moving forward, I would like to dwell upon the significance of PMLA. The Prevention of Money Laundering Act, 2002 (PMLA) forms the core of the legal framework put in place by India to combat money laundering. PMLA and the Rules notified there under came into force with effect from July 1, 2005. As per the provisions of the PMLA, it is obligatory for all Intermediaries registered under Section 12 of SEBI Act to adhere to client account opening procedures and maintain records of such transactions as prescribed by the PMLA and Rules notified there under. SEBI has issued necessary directives vide circulars, from time to time, covering issues related to Know Your Client (KYC) norms, Anti- Money Laundering (AML), Client Due Diligence (CDD) and Combating Financing of Terrorism (CFT), for compliance. The Directives also set out the steps that a registered intermediary or its

representatives shall implement to discourage and to identify any money laundering or terrorist financing activities.

22. SEBI Circular dated January 18, 2006 inter-alia mandates the Intermediaries to designate an Officer as "Principal Officer", who would be responsible for ensuring the compliance of the provisions of the Prevention of Money Laundering Act, 2002 (PMLA). The name, designation and addresses (including Email ID) of the "Principal Officer" had to be intimated to the Office of the Director, FIU on an urgent basis. It is noted that the appointment of Mr. Vipul Patel as Principal Officer was communicated to FIU on November 30, 2007, with a delay of around 19 months.

23. Pursuant to amendments to PMLA and the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (PML Rules), SEBI issued a Circular vide ref. no. CIR/MIRSD/11/2014 dated March 12, 2014 to all Intermediaries making consequential amendments and additions to SEBI Master Circular dated December 31, 2010. Accordingly, all Intermediaries are required to appoint a Designated Director who will ensure overall compliance with the obligations imposed under Chapter IV of the PMLA and the Rules and inform the details to FIU immediately. It is noted that the Mr. Sunil Patel was appointed as Designated Director on July 1, 2014, which was communicated to FIU on July 10, 2014, with a delay of four months. With respect to the same, I have perused the submissions of the Noticee. I note that the Noticee has not denied the fact that appointment of the Designated Director had been made on July 1, 2014 whereas the Circular dated March 12, 2014 had mandated the appointment and intimation of the same on an urgent basis. In the absence of any specific timeline prescribed under the circular, I consider it relevant to examine the reasonability of time taken in such appointment and any instance of irregularity with respect to the provisions of the Circular during such period till the appointment. With regard to the same, it is noted that the Noticee has taken about 3 and half months' time from the date of circular to comply with the appointment of the designated director. While I note that no irregularity during such period is forthcoming from the record, however as noted above there was a delay of 19 months in communicating the appointment of principal officer in 2007 in contravention with the provisions of SEBI Circular dated January 18, 2006. Further, I am of the view that the appointment of a designated director did not require any fresh exercise of recruitment and only required one of the directors to be designated as such designated director and therefore delay seen in this context cannot be considered reasonable and viewed leniently. Therefore I conclude that the Noticee has violated the provisions of SEBI circular ref. no. ISD/CIR/RR/AML/1/06 dated January 18, 2006 and SEBI Circular ref. no. CIR/MIRSD/1/2014 dated March 12, 2014;

24. Further, with respect to processing of transaction alert by ACML during the examination pertaining to SEBI Circular ref. no., CIR/ISD/AML/3/2010 dated December 31, 2010, the following was observed:

a) No system of transaction monitoring at the stock broker level i.e., ACML.
b) There was no proper record for the alert received from the Stock Exchanges.
c) There was no record for alerts taken up or not taken up for consideration/examination/follow up and reason for the same.

d) There was no record for closure of alerts based on reasons arrived at after examination.

e) Not even a single transaction was identified by ACML as suspicious transaction and consequently there is no STR filed with FlU during the inspection period.

25. In this regard, it is the submission of the Noticee that the above rules of the said circular of SEBI, specifying the requisition of PMLA with respect to maintenance of records and monitoring of transactions, does not mention anything with respect to "Transaction Alert" and conversely that there is no adverse observation with respect to requisition of law prescribed under Rule 3 of PMLA. However, I note that the said Circular mandates that all the intermediates should put in place a system of maintaining proper record of transactions prescribed under Rule 3 of PML Rules which pertain not only to cash transactions but also any transactions of suspicious nature. In this regard, I note that while the circular speaks about maintaining the proper record of the cash transactions, in the instant case, from the record, there have also been adverse observations that the trades were facilitated without complying with the KYC requirements with the sub-broker of the Noticee. However, in this regard, I note that there has not been a single instance of transaction being reported as suspicious by the Noticee and that there has been no STR filed with FIU in spite of the aforesaid observation regarding suspicious transaction that is apparent, on the face of the record. Further, the Noticee has have not adduced any documentary evidence to demonstrate that there was a system to generate alerts and having processed such alerts on various parameters to achieve the objectives of the Circular. Further, I note that there has been no generation of alert, processing of alert and closure of alert or evidence of any such alert being followed up or taken up with the exchange by the Noticee. In this background, I also find it pertinent to note that the significance and criticality of PMLA cannot be stressed enough in safeguarding the integrity of the securities market involving financial transaction. Further, the Noticee being an integral part of the market in the capacity of being a stock broker, I note that the duty is evidently casted upon him to uphold such provisions of law in true spirit. However, the Noticee vide his submission has resorted to take shelter under the technicalities of the provisions whereas I am of the opinion that the Noticee has evidently failed to endorse the spirit of the regulation by not having a system to identify such transactions which are of suspicious in nature. Therefore, I am inclined to view the default in compliance by the Noticee seriously and therefore, I conclude that the Noticee has violated the provision of the Circular SEBI Circular ref. no., CIR/ISD/AML/3/2010 dated December 31, 2010.

Client funding activities

26. I find from the material available on record that the Noticee was engaged in client funding activities as under:

Sl. No.	CLIENT CODES	DATE OF DEBIT	AMOUNT OF DEBIT (in ₹)	DATE OF RECOVERY OF DEBIT	WORKING DAYS	WHETHER FURTHER EXPOSURE GIVEN BEYOND 7 DAYS?	The T+2+5TH DAY	AMOUNT RECOVERED TILL T+2+5 DAYS (in ₹)	Amount funded (in ₹)
1	028A790	13-May-14	6,424,237.00	28-May-14	11	Yes	22-May-14	133,877.00	6,290,360.00
2	028T9	27-Mar-14	5,995,061.13	22-Apr-14	18	Yes	7-Apr-14	2,264,903.29	3,730,157.84
3	252S200	27-Jun-14	11,504,703.00	17-Jul-14	14	Yes	8-Jul-14	7,551,829.80	3,952,873.20
4	252V001	3-Apr-14	5,336,619.00	17-Apr-14	10	Yes	14-Apr-14	3,572,660.00	1,763,959.00
5	028J504	21-Jul-14	38873787.4	6-Aug-14	12	Yes	30-Jul-14	34649734.35	4,224,053.05

27. It is observed that the aforesaid analysis was based on the verification of the combined ledgers of NSE and BSE and involved checking for the recovery of the debit balance and whether further exposure was granted beyond T+2+5 days in spite of non-recovery of such debit balance in the client account. It was noted that the Noticee had allowed the clients to take further exposure after 5 days from the pay-in date without realization of the debit balance. From the same it is alleged that the Noticee had provided the loan for trading against the stock to the clients. In response, the Noticee has disputed the aforesaid details with respect to the client code and the amount of debit and funding details. While the Noticee has not produced any documentary evidence in support of the said submission by virtue of which the submissions lack substance, I also find it pertinent to note that there has been no denial of the Noticee that such funding of clients was done by it which was in the form of a loan against securities. Further, I also note that the aforesaid analysis for one sample funding by the Noticee is made after excluding the security balances available in the clients' accounts based on which fresh exposure had been given by the Noticee. Further, such proven funding in the sample data above involves amount from Rs. 17,63,959/- to Rs. 62,92,360/-. Therefore, considering the serious nature of such transactions by the Noticee as noted from the material available on record and in absence of any substantial submission to refute the same by the Noticee, I conclude that the Noticee has violated the provisions of Rule 8 (1) (f) & 8 (3) (f) of SCRR 1957, SEBI circular ref. no., SMD/POLICY/CIR-6//97 dated May 07, 1997 and NSE circular (Download ref No. NSE/INSP/20638 dated April 26, 2012.

Trading terminals

28. I noted that Shaswat Stock Brokers Pvt., Ltd., (hereinafter referred to as SSBPL), a sub-broker affiliated to the Noticee had obtained the following trading terminal (BSE-Cash) with the name of Mr. Amit Kumar Jani (Employee of SSBPL) as the User. However, it was found that the trading terminal was being operating by Mr. Subhash Shah ex-director of SSBPL.

Sl. No.	Name of the user	Terminal No.	Executed trades using the Trading terminal		Remarks
			From	To	
1.	Amit kumar Jani	3800150028017001 (A/80, Kamdhenu Complex)	20.07.2012	As on the date of inspection i.e. 12-13 February, 2015 and continued further	(Ex-Director of the sub-broker Mr. Subhash Shah is operating terminal)

29. It was noted that the details of the trading terminal furnished by the sub broker during the course of inspection does not contain the aforesaid trading terminal extended to Mr. Subhash Shah. It was observed that SSBPL had obtained the above trading terminal (BSE-Cash) in the name of Mr. Amit kumar Jani (employee of SSBPL) and extended to Mr. Subhash Shah. Therefore, it was alleged that Noticee had not exercised due diligence in operating the trading terminals by its sub broker.

30. On the issue of unauthorized operation of the trading terminal by a person other than the authorized sub-broker, the Noticee submitted as under:

- "The great hue and cry has been made with respect to unauthorized trading through one terminal in the name of Amitkumar Jani, an employee of the concerned sub broker. The existence of said employee is not under dispute but his temporary absence from the terminal has been the bone of contentions of the allegation to have utilized by the person sitting in his absence. The claim with respect to unauthorized trading by person other than Amit kumar Jani has not been substantiated by placing trade log as evidence for the date February 13, 2015. In absence of such trade log, the observation is not tenable in the eyes of law.
- So far the trading through user is concerned, the same has been found to have been leveled on the basis of oral / verbal communication between the SEBI inspecting authority and the concerned sub broker for which the company is not aware about and therefore expresses its difficulty to respond to the same.

31. I note that the Broker Regulations directly envisages stricter liability on the broker for the operations of the Sub-broker more specifically with respect that pertains to the operation of the trading terminal. In this regard, I find it pertinent to note that the functioning of a terminal, which is the first contact of an investor in accessing the securities market holds a greater significance and I am of the opinion that there can be hardly any scope for negligence on the part of the broker or a sub-broker.

32. However, in the instant case, the Noticee has admittedly submitted that there was a temporary absence of the concerned person Amitkumar Jani, from the terminal and consequentially a third person in his absence was allowed to operate the terminal. Furthermore, I note that the operation of the terminal i.e

3800150028017001 (A/80, Kamdhenu Complex) by Amit kumar Jani was recorded by the SEBI officials during on the date of inspection itself which is further corroborated by the submissions of the Sub-broker before the inspection authority. Therefore, the submission of the Noticee that the allegation is based on oral statement is devoid of any merit. Therefore, I note that the trading terminal was extended beyond authority to a third party/ person by the sub-broker on February 13, 2015 and the Noticee failed to monitor the activities of the sub-broker affiliated to it. Considering the gravity of the instant allegation, the liability of the Noticee to such mis-utilization of trading terminals cannot be viewed leniently. Therefore, I conclude that the Noticee has not exercised due diligence in operating the trading terminals by its sub broker. Therefore, the Noticee has violated the provisions of SEBI Circular ref. no., SMDRP/POLICY/CIR-49/2001 dated October 22, 2001 and Clause A(1) & A (2) of the Code of conduct for Stock Brokers as stipulated in schedule II read with Regulation 9(f) of the Stock Brokers Regulations.

33. SEBI Circular SMDRP/Policy/CIR-49/2001 dated October 22, 2001 mandates that trading terminals shall be granted only at the member's registered office, branch offices and their registered sub-brokers' offices. It is observed that SSBPL had obtained the trading terminals from its affiliated stock broker i.e., Noticee and extended to some of its clients / individuals, as per the following details.

S. No.	Name of the user	Address	Terminal No.	Executed trades using the Trading terminal	
				From	To
1.	PARAG KUMARPAL BHAVNAGRI	111 TIRTHRAJ COMPLEX ELLISBRIDGE	3800060028006001	17/04/2007	Active as on date of inspection.
2.	SHITALNAVNITCHOKSHI	3 AMULYA COMPLEX OPP.CENTRAL	3800060028004001	24/01/2007	Active as on date of inspection

S. No.	Name of the user	Address	Terminal No.	Executed trades using the Trading terminal	
				From	To
		BANK AMBAWADI			
3.	Pradipp Kamdar	32, kahannagar 271 293 nc kelkarroad, dadar,west, Mumbai	4000280028903019	31/01/2012	11/02/2013
4.	ANKITRAMESHCHANDRAPANCHAL	304 SAMEDH COMPLEX C.G. ROAD	3800090028001001	25/05/2007	Active as on date of inspection

34. As per the information received from BSE vide email dated July 29, 2015 it was observed that while obtaining trading terminal, the sub broker under the column 'relationship' has mentioned as Authorized Person in respect of the terminals located at Ahmedabad and the terminal located at Dadar, Mumbai as 'employee'. It was also observed that SSBPL had stated that these 4 terminals were closed w.e.f 2008 and no trades were put through these terminals. However, as per the information received from BSE vide email dated July 29, 2015, it was observed that SSBPL, has been executing trades on 3 terminals out of 4 terminals. It was also alleged that the Noticee has failed to monitor the trading terminal being used by its sub-broker.

35. From the observations already made at para 30 above, I note that a broker is at a higher level of liability in ensuring efficient management of trading terminals and there cannot be a leisurely approach of the trading terminals. I note that the Noticee has raised the similar contention as noted at para 29 above in its response. However, I do not find any merit in the submissions of the Noticee and for the reasons already mentioned above, I am of the opinion that the Noticee failed to exercise due diligence in disposing its duties over the sub-broker affiliated to it by failing to monitor the trading terminal being used by its sub-broker and therefore violated the provisions of SEBI Circular ref., no., SMDRP/POLICY/CIR-49/2001 dated October 22, 2001, Regulation 26 (xix) and Clause A (2) of the Code of conduct for Stock Brokers as stipulated in schedule II read with Regulation 9(f) of the SEBI(Stock Brokers and Sub Brokers) Regulations, 1992.

36. Further, I note that as per SEBI Circular No. SEBI/MIRSD/16/2011 dated August 22, 2011 delivery of securities shall be given to the stock broker and at the same time stock broker shall transfer shares directly to the demat accounts of the client. However, it is observed that the sub broker (SSBPL) has received certain shares from clients in off-market mode and also transferred certain shares to the clients in off-market mode, the details of which are furnished hereunder.

Target Client ID	Source DP ID	Source Client ID	Source Client Name	Registered as client/Not registered as client	Scrip Name	Execution Date	No of Securities	Value
10018403	IN301485	10061844	BHUPENDRA RAMANLAL SHAH	Registered as a client	MERIT CREDIT CORPORATION LIMITED EQ	03-06-2014	200000	Not traded in NSE/BSE
10018403	IN301485	10062492	BHUMI SANJAY SHAH	Not Registered as a client	MERIT CREDIT CORPORATION LIMITED EQ	04-06-2014	100000	-do-
10018403	IN301485	10089898	MASAT TEXTURISING AND TWISTING PRIVATE LTD	Registered as a client	MERIT CREDIT CORPORATION LIMITED EQ	05-06-2014	20000	-do-
10018403	IN301485	10635467	SUN FINLEASE (GUJARAT) LIMITED	Registered as a client	MERIT CREDIT CORPORATION LIMITED EQ	05-06-2014	25000	-do-
10018403	IN301485	10653580	BIREN N DALWADI	Not Registered as a client	MERIT CREDIT CORPORATION LIMITED EQ	14-06-2014	50000	-do-
10018403	IN301485	10295455	KASHMIRA BIREN DALWADI	Not Registered as a client	MERIT CREDIT CORPORATION LIMITED EQ	24-06-2014	100000	-do-
10018403	IN301485	10061861	JYOTIBEN BHUPENDRA SHAH	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	05-06-2014	55000	-do-
10018403	IN301485	10089898	MASAT TEXTURISING AND TWISTING PRIVATE LTD	Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	05-06-2014	54500	-do-
10018403	IN301485	10653580	BIREN N DALWADI	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	14-06-2014	100000	-do-
10018403	IN301321	10349540	BHAVNA TEXTILE PVT. LTD.	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	17-06-2014	89000	-do-

Target Client ID	Source DP ID	Source Client ID	Source Client Name	Registered as client/Not registered as client	Scrip Name	Execution Date	No of Securities	Value
10018403	IN301321	10373152	DINDAYAL PROCESSORS PVT LTD	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	17-06-2014	50000	-do-
10018403	IN301485	10295455	KASHMIRA BIREN DALWADI	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	24-06-2014	100000	-do-
10018403	IN301321	10373103	HEXA INTERNATIONAL PVT LTD	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	26-06-2014	90200	-do-
10018403	IN301321	10373099	VISHAL FABRICS PVT LTD	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	09-07-2014	75000	-do-
10018403	IN302461	10416294	ANITA RAKESHKUMAR RANKA	Registered as a client	MAHANAGAR TELEPHONE NIGAM LIMITED. EQ	21-10-2014	1000	26600
10018403	IN303069	10041626	DOSHI JAYENDRA KANTILAL	Registered as a client	FINOLEX INDUSTRIES LIMITED EQ	10-10-2014	100	32495
10018403	IN302461	10416294	ANITA RAKESHKUMAR RANKA	Registered as a client	POLY MEDICURE LIMITED EQ	21-10-2014	1000	831950
10018403	IN302461	10416294	ANITA RAKESHKUMAR RANKA	Registered as a client	LAKSHMI MACHINE WORKS LIMITED NEW EQ RS. 10/-	21-10-2014	100	396690
10018403	IN302461	10218265	RAKESH MANGILAL RANKA	Registered as a client	HINDUSTAN OIL EXPLORATION COMPANY LIMITED EQ	05-11-2014	15000	771750
10018403	IN302461	10190829	JHAVERI TRADING AND INVESTMENT PVT LTD	Registered as a client	C. MAHENDRA EXPORTS LIMITED EQ	21-07-2014	23000	4527550
10018403	IN302461	10190829	JHAVERI TRADING AND INVESTMENT PVT LTD	Registered as a client	C. MAHENDRA EXPORTS LIMITED EQ	31-07-2014	2368	492544
10018403	IN302461	10218265	RAKESH MANGILAL RANKA	Registered as a client	THE TINPLATE COMPANY OF INDIA LTD. EQ	05-11-2014	15000	1142250
10018403	IN302461	10416294	ANITA RAKESHKUMAR RANKA	Registered as a client	DCB BANK LIMITED EQ	21-10-2014	1000	86300
10018403	IN303069	10041626	DOSHI JAYENDRA KANTILAL	Registered as a client	FULFORD INDIA EQ	10-10-2014	700	1324960
10018403	IN303069	10041626	DOSHI JAYENDRA KANTILAL	Registered as a client	SHRENUJ AND COMPANY LIMITED EQ NEW FV. 2/-	10-10-2014	2730	166393.5
10018403	IN302461	10190829	JHAVERI TRADING AND INVESTMENT PVT LTD	Registered as a client	SWAN ENERGY LIMITED EQ NEW FV RE, 1/-	21-07-2014	2000	122300
10018403	IN302461	10190829	JHAVERI TRADING AND INVESTMENT PVT LTD	Registered as a client	SWAN ENERGY LIMITED EQ NEW FV RE, 1/-	01-10-2014	35000	2075500
10018403	IN302461	10416294	ANITA RAKESHKUMAR RANKA	Registered as a client	THE SOUTH INDIAN BANK LTD. EQ NEW F.V. RE.1/-	21-10-2014	51000	1346400
10018403	IN302461	10421809	VIRALI VICKY JHAVERI	Registered as a client	VISHAL FABRICS LIMITED EQ	23-08-2014	3000	144150
10018403	IN302461	10293712	ASHWINBHAI SURENDRABHAI SHETH	Registered as a client	VISHAL FABRICS LIMITED EQ	26-08-2014	3000	144150
10018403	IN302461	10190829	JHAVERI TRADING AND INVESTMENT PVT LTD	Registered as a client	UNITED SPIRITS LIMITED EQ	09-10-2014	3000	6885750

Target Client ID	Source DP ID	Source Client ID	Source Client Name	Registered as client/Not registered as client	Scrip Name	Execution Date	No of Securities	Value
10018403	12034400	769584	NARESH ATMARAM DALWADI	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	27-08-2014	74750	Not traded in NSE/BSE
10018403	12034400	769191	SAROJBEN DALWADI	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	27-08-2014	74750	Not traded in NSE/BSE
10018403	12064600	00027963	SMITHBLOCK FINANCIAL SERVICES PRIVATE LIMITED	Not Registered as a client	SWAN ENERGY LIMITED EQ NEW FV RS.2/-	03-02-2014	50000	6460000
							Total	2,69,51,132.50

The details of shares transferred by SSBPL in off-market to clients is furnished hereunder.

Source DP ID	Source Client ID	Target DP ID	Target Client ID	Target Client Name	Registered as client / Not registered as Client	Scrip Name	Execution Date	No of Securities	Value
IN302461	10018403	IN302461	10458823	DREAMSTONE CONSTRUCTION PVT LTD	Registered as a client	MERIT CREDIT CORPORATION LIMITED EQ	08-07-2014	45000	Not traded in NSE/BSE
IN302461	10018403	IN302461	10458840	STERLING STRANDS PRIVATE LIMITED	Registered as a client	MERIT CREDIT CORPORATION LIMITED EQ	08-07-2014	450000	-do-
IN302461	10018403	IN302461	10458858	LEGACY INFOTECH PVT.LTD.	Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	08-07-2014	254500	-do-
IN302461	10018403	IN302461	10458831	LAKSHYA INFRASPACE PRIVATE LIMITED	Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	08-07-2014	284200	-do-
IN302461	10018403	IN302461	10458831	LAKSHYA INFRASPACE PRIVATE LIMITED	Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	22-09-2014	75000	-do-
IN302461	10018403	IN302461	10458858	LEGACY INFOTECH PVT.LTD.	Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	22-09-2014	149500	-do-
IN302461	10018403	IN303069	10041626	DOSHI JAYENDRA KANTILAL	Registered as a client	FINOLEX INDUSTRIES LIMITED EQ	22-10-2014	100	31820
IN302461	10018403	IN302461	10190829	JHAVERI TRADING AND INVESTMENT PVT LTD	Registered as a client	C. MAHENDRA EXPORTS LIMITED EQ	24-07-2014	9500	1799300
IN302461	10018403	IN302461	10190829	JHAVERI TRADING AND INVESTMENT PVT LTD	Registered as a client	C. MAHENDRA EXPORTS LIMITED EQ	28-07-2014	13000	2581150
IN302461	10018403	IN302461	10190829	JHAVERI TRADING AND INVESTMENT PVT LTD	Registered as a client	C. MAHENDRA EXPORTS LIMITED EQ	28-07-2014	500	99275
IN302461	10018403	IN302461	10416294	ANITA RAKESHKUMAR RANKA	Registered as a client	DCB BANK LIMITED EQ	28-10-2014	300	25875
IN302461	10018403	IN302461	10416294	ANITA RAKESHKUMAR RANKA	Registered as a client	DCB BANK LIMITED EQ	03-11-2014	700	63945
IN302461	10018403	IN303069	10041626	DOSHI JAYENDRA KANTILAL	Registered as a client	FULFORD INDIA EQ	22-10-2014	700	1288000
IN302461	10018403	IN303069	10041626	DOSHI JAYENDRA KANTILAL	Registered as a client	SHRENUJ AND COMPANY LIMITED EQ NEW FV. 2/-	22-10-2014	2730	148921.50
IN302461	10018403	IN302461	10190829	JHAVERI TRADING AND INVESTMENT PVT LTD	Registered as a client	SWAN ENERGY LIMITED EQ NEW FV RE, 1/-	26-09-2014	35000	2082500
IN302461	10018403	IN302461	10293712	ASHWINBHAI SURENDRABHAI SHETH	Registered as a client	VISHAL FABRICS LIMITED EQ	23-08-2014	3000	144150
IN302461	10018403	IN302461	10421809	VIRALI VICKY JHAVERI	Registered as a client	VISHAL FABRICS LIMITED EQ	26-08-2014	3000	144150

Source DP ID	Source Client ID	Target DP ID	Target Client ID	Target Client Name	Registered as client / Not registered as Client	Scrip Name	Execution Date	No of Securities	Value
IN302461	10018403	12064600	00027963	SMITHBLOCK FINANCIAL SERVICES PRIVATE LIMITED	Not Registered as a client	SWAN ENERGY LIMITED EQ NEW FV RE, 1/-	20-03-2014	25000	1537500
IN302461	10018403	12064600	00027963	SMITHBLOCK FINANCIAL SERVICES PRIVATE LIMITED	Not Registered as a client	SWAN ENERGY LIMITED EQ NEW FV RE, 1/-	21-03-2014	25000	1556250
IN302461	10018403	12064600	00027963	SMITHBLOCK FINANCIAL SERVICES PRIVATE LIMITED	Not Registered as a client	SWAN ENERGY LIMITED EQ NEW FV RE, 1/-	25-03-2014	25000	1567500
IN302461	10018403	12064600	00027963	SMITHBLOCK FINANCIAL SERVICES PRIVATE LIMITED	Not Registered as a client	SWAN ENERGY LIMITED EQ NEW FV RE, 1/-	28-03-2014	25000	1558750
								Total	1,46,29,087

37. As per the aforesaid circular, the sub-broker shall only assist the investors in buying, selling or dealing in securities through stock brokers. However, it is observed that SSBPL had directly received the shares in it's demat account and also transferred the shares from it's demat account to the clients.

Target Client ID	Source DP ID	Source Client ID	Source Client Name	Registered as client/Not registered as client	Scrip Name	Execution Date	No of Securities	Value
10018403	IN301485	10062492	BHUMI SANJAY SHAH	Not Registered as a client	MERIT CREDIT CORPORATION LIMITED EQ	04-06-2014	100000	Not traded in NSE/BSE
10018403	IN301485	10653580	BIREN N DALWADI	Not Registered as a client	MERIT CREDIT CORPORATION LIMITED EQ	14-06-2014	50000	-do-
10018403	IN301485	10295455	KASHMIRA BIREN DALWADI	Not Registered as a client	MERIT CREDIT CORPORATION LIMITED EQ	24-06-2014	100000	-do-
10018403	IN301485	10061861	JYOTIBEN BHUPENDRA SHAH	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	05-06-2014	55000	-do-
10018403	IN301485	10653580	BIREN N DALWADI	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	14-06-2014	100000	-do-
10018403	IN301321	10349540	BHAVNA TEXTILE PVT. LTD.	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	17-06-2014	89000	-do-
10018403	IN301321	10373152	DINDAYAL PROCESSORS PVT LTD	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	17-06-2014	50000	-do-
10018403	IN301485	10295455	KASHMIRA BIREN DALWADI	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	24-06-2014	100000	-do-
10018403	IN301321	10373103	HEXA INTERNATI	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	26-06-2014	90200	-do-

			ONAL PVT LTD					
10018403	IN301321	10373099	VISHAL FABRICS PVT LTD	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	09-07-2014	75000	-do-
10018403	12034400	769584	NARESH ATMARAM DALWADI	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	27-08-2014	74750	-do-
10018403	12034400	769191	SAROJBEN DALWADI	Not Registered as a client	SUN FINLEASE (GUJARAT) LIMITED EQ	27-08-2014	74750	-do-
10018403	12064600	00027963	SMITHBLOCK FINANCIAL SERVICES PRIVATE LIMITED	Not Registered as a client	SWAN ENERGY LIMITED EQ NEW FV RS.2/-	03-02-2014	50000	6460000
							Total	64,60,000.00

38. Further, it was observed that the Noticee conducted inspection of the SSBPL for the year 2013-14 on January 16, 2015. However, it has not verified the important aspect of handling funds and securities of the clients and failed to monitor the activity of the sub-broker, since the Director of the said sub-broker is holding important position in ACML.

39. Further, it was also observed that during the financial year 2012-13 and 2013-14 (till December 31, 2014), SSBPL had dealt with the following persons without entering into Know Your Client (KYC) documents and Unique Client Code (UCC) with the affiliating stock broker i.e., ACML. The details of transactions carried out by SSBPL is also furnished hereunder.

40. It was alleged that by not executing the KYC with the aforementioned clients/ investors through his affiliating stock broker, the Noticee-2 has not complied with the provisions of SEBI Circular ref. no., SEBI/MIRSD/16/2011 dated August 22, 2011 and Clause A(1) and A(2) of Code of Conduct for sub brokers specified under Schedule II read with Regulation 15(1)(b) of SEBI (Stock Broker and Sub Broker) Regulations, 1992.

41. In this regard, I note that the Noticee conducted inspection of SSBPL for the year 2013-14 on January 16, 2015. However, it has not verified the important aspect of entering into KYC with the clients or it has ignored since the director of SSBPL was holding important position in ACML as noted above. Therefore, it is concluded that the Noticee had violated the provisions of Clause A (2) of the Code of Conduct specified for Stock Brokers in Schedule II read with Regulation 9 (f) of Stock Brokers Regulations.

42. In this regard, while the Noticee has made submission that the sub-broker is a separate legal entity, however, the exercise of inspection cannot be made in a leisurely manner and cannot be viewed leniently given the fact that the Broker carries a greater liability towards the functioning of a sub-broker affiliated to it. Furthermore, from the very fact that the ex-director of the Sub-broker is holding an important position in ACML, the deliberate leverage given in favour of the Sub-broker cannot be ruled out which is evident from the fact that glaring irregularity in routing of funds and securities of clients of sub-broker through the sub-broker rather than directly to/from the broker account as prescribed in the SEBI circulars. Further, the grave irregularity of allowing the clients to trade without KYC documents, which has a scope of directly threatening the integrity of market and compromising the PMLA provisions cannot have been escaped the notice during the inspection by the Noticee. However, the Noticee has not made any remark during its inspection with respect to the same which directly hints at possible collusion of the Noticee with its sub-broker which cannot be viewed leniently. Further, it is the submission to the Noticee that the affiliation of the Noticee with the sub-broker is limited only to BSE and NSE and the scope of the inspection should be restricted only to the trades carried out on BSE and NSE and not otherwise and that the inspection authority has gone beyond their mandate. I note that the said submission is devoid of any merit as in the interest of the securities market and safeguarding the interest of the investors, SEBI being the regulator, all the activities of the Broker and the sub-broker needs to be examined in totality in order to assess any possible risks which may have a contagious effect or impact on the market. In order to safeguard the interest of the investors, I note that SEBI has prescribed that the brokers should not deal in any activity other than activities related or incidental to securities market vis a vis fund based activities, unregistered activities, illegal trading etc. In the instant case, I also note that the sub-broker of the Noticee is also a member of the Ahmedabad Stock Exchange (ASE) and ACML is also a subsidiary of ASE. In any sphere of activity in the securities market, financial transaction without undertaking KYC of clients clearly leave scope for money laundering activity to flourish. Therefore, it is the responsibility of the Noticee to not only ensure that activities of its sub-broker in any capacity are monitored and reported in case they are found to be non-compliant of the provision of law. I note that the Noticee and its sub broker being registered entities with SEBI and both of them are well acquainted with the requirement and significance of the registering the clients and taking KYC documents and therefore, it is duty bound to identify and report the instances of irregularities in registering the clients/ KYC documents either in its capacity of registered entity or otherwise to appropriate authorities. Any failure to monitor and report such suspicious merely on the ground that they are not within the scope of the registered activities cannot be the ground for the Noticee to plead innocence. Therefore, I conclude that the Noticee had failed to comply with the provisions of Clause A (2) of the Code of conduct for Stock Brokers as stipulated in schedule II read with Regulation 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

43. SEBI takes various steps and measures from time to time in order to protect the interest of investors in securities market and also to promote orderly, fair and transparent dealings by the stock brokers. Further, SEBI also prescribes various checks and balances by issuing various circulars to prevent any misuse by stock brokers while dealing in the market and with their clients. In view of above, it is concluded that the Noticee has violated different provisions of Circulars and Regulations as under:

(a) SEBI Circular dated December 3, 2009 on dealings between a client and a stock brokers – trading members included;

b) Stock Exchange Circulars ref. no., NSE/INSP/13606 dated December 3, 2009, Clarification circulars NSE/INSP/14048 dated February 3, 2010 and NSE/INSP/21651 dated September 7, 2012;

c)SEBI circular ref. no. ISD/CIR/RR/AML/1/06 dated January 18, 2006;

d) SEBI Circular ref. no. CIR/MIRSD/1/2014 dated March 12, 2014;

e) SEBI Master Circular ref. no. CIR/ISD/AML/3/2010 dated December 31, 2010;

f) Rule 8 (1) (f) and 8 (3) (f) of SCRR, 1957, SEBI Circulars ref. no., SMD/POLICY/Cir-6/97 dated May 7, 1997 and NSE Circular (Download ref. no. NSE/INSP/20638 dated April 26, 2012;

g) *SEBI Circular ref. no. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001;*

h) *Clause A (1), A (2) and A (5) of the code of Conduct specified under Schedule II read with Regulation 9 (f) of the Stock Brokers Regulations and*

i) *Regulation 26 (iii), (xv), (xvi) (xix) and (xx) of the Stock Brokers Regulations.*

44. Under the SEBI Act 1992, SEBI has been assigned a statutory duty to protect the interests of investors in securities and regulating the securities market by such measures as it may think fit. The role of the stock broker as a market intermediary is indeed very crucial, especially since any failure to exercise due diligence, skill and care will directly impact the market by allowing various collusive activities by its clients and sub-broker either directly or indirectly. It is the role of the stock broker to put proper systems, process and procedure in place to detect and prevent any collusive practice and non-compliance, which in the instant case, I note that stock broker failed to even stand its existence on ground level and also failed to perform as stock broker on various instances as mentioned above.

45. The object of inspection of the books of accounts and records of any intermediary is to monitor and identity any non-compliances with respect process, procedure and systems prescribed through various provisions of the SEBI Act, Rules, and Regulations made thereunder and Circulars issued from time to time and thereafter take necessary corrective steps for orderly, fair and transparent conduct of market participants.

46. In this connection I would like to refer to the order of the Hon'ble Securities Appellate Tribunal in the matter of **Religare Securities Limited v. Securities and Exchange Board of India (Appeal No. 23 of 2011 dated June 16, 2011)** wherein, the Hon'ble SAT has observed, "It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant. This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent."

47. I find from the material available on record that the Noticee has grossly failed in performing its duties as a registered stock broker and also failed to adhere to high standards of service by facilitating and indulging in fraudulent and unfair trade practices and thus acted against the integrity of the securities market.

48. The provisions of Section 15HB of SEBI Act and Section 23H of SCRA are reproduced hereunder.

> ***Section 15HB of SEBI Act - "Penalty for contravention where no separate penalty has been provided".***
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> -
>
> *"Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for*

which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."

Section 23H of SCRA – "Penalty for contravention where no separate penalty has been provided".

Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees

49. Here, it is important to refer to the observation of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** wherein it was held that:

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

50. While determining the quantum of penalty under Section 15 HB of SEBI Act 1992 and Section 23H of SCRA , it is important to consider the factors stipulated in Section 15J of SEBI Act, 1992 and Section 23J of SCRA which read as under:-

- Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15-I of SEBI Act, 1992 and Section 23H of SCRA, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

51. It is not possible from the material available on record to ascertain the actual disproportionate gain or unfair advantage made by the Noticee or the amount of loss caused to an investor or group of investors as a result of the default. However, I have analyzed the data available on record to assess the seriousness of the violation made by the Noticee, pursuant to its failure to act with due skill care and diligence and also its failure to monitor sub-broker affiliated to it.

52. In the backdrop of above information the allegations against the Noticee are serious in nature.

ORDER

53. 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 of the SEBI Act and Section 23 of SCRA and Rule 5 of Adjudication Rules, I hereby impose a monetary penalty of Rs. 20, 00,000/- (Rupees Twenty Lakhs) on the Noticee, viz, ASE Capital Markets Ltd (Now ACML Capital Markets Limited).

54. I am of the view that the said penalty would be commensurate with the violations committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors and markets.

55. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

56. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-II, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

57. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Date: October 31, 2019 **B J DILIP**

Place: Mumbai **ADJUDICATING OFFICER**