BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AN/HP/HG/2022-23/25353]

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) RULES, 1995

In respect of

ATS Share Brokers Private Limited
[PAN: AACCJ1755C]

In the matter of Trading Members in Illiquid Stock Options

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as, “SEBI”) had examined trading in illiquid stock options at BSE for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, “SEBI Act”) and various Rules and Regulation made thereunder.

2. An Interim Order No. WTM/RKA/ISD/106/2015 dated August 20, 2015 (‘Interim Order’) was passed by SEBI in the matter of Illiquid Stock Options restraining 59 persons /entities from buying, selling or dealing in the securities market, either directly or indirectly, in any manner, till further directions. Confirmatory Orders dated July 30, 2016, August 22, 2016 and August 24, 2016 (collectively "Confirmatory Orders" in short) in this regard, were passed by SEBI confirming the directions issued vide the Interim Order against all 59 persons /entities.

3. The modus operandi that was identified in the Interim order and Confirmatory Orders, briefly stated, was that certain entities (clients) had continuously made

profits and certain entities (clients) had continuously made losses by reversing their trades or executing reversal trades in various individual Stock Options contracts on BSE's Stock Options segment. In the Interim order, these reversal trades were also referred to as "non-genuine trades". Reversal trades executed by clients through broker had been classified as those trades in which an entity (client) reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day.

4. Subsequent to passing of aforementioned Interim Order against 59 persons /entities, SEBI passed an Interim Order dated February 17, 2016 against 22 Trading Members ("Brokers") in the same matter of Illiquid Stock Options. However, the said order was set aside by Hon'ble Securities Appellate Tribunal ("SAT") vide its orders dated February 25, 2016, March 04, 2016, March 09, 2016, March 14, 2016, March 15, 2016, March 18, 2016 and April 05, 2016. Pursuant to appeal, in terms of order of Hon'ble Supreme Court dated July 01, 2016, SEBI passed order no. WTM/RKA/ISD/94/2016 dated August 12, 2016 in the matter stating, inter alia, that a final view for appropriate action be taken after completion of ongoing investigation in the matter.

5. Investigation was carried out in the instant matter for the period April 01, 2014 – September 30, 2015 (hereinafter referred to as "IP/ Investigation Period"), which is same as the examination period referred in the Interim Order dated February 17, 2016 in respect of Brokers in the matter of Illiquid Stock Options.

6. Trade data of BSE's Stock Options segment during the I.P. for the Illiquid Stock Options was analysed to identify reversal trades. Pursuant to said analysis it was observed that a total of 2,91,744 non-genuine trades were executed by 14,720 entities through 192 Brokers that resulted in reversal trades during the I.P. Trade data pertaining to these 2,91,744 non-genuine trades formed the source data for the case against brokers.

7. Subsequently, SEBI had initiated Adjudication Proceedings against ATS Share Brokers Private Limited (hereinafter referred to as "**Noticee**") under Section 15HB

of SEBI Act, 1992 for not exercising care and diligence in the conduct of its business while dealing with its clients in violation of Schedule II A (2) of Code of Conduct for Stock Brokers r/w Regulation 9 (f) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as "**Broker Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

8. Ms. Maninder Cheema, CGM, SEBI was appointed as Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**"), vide communique dated September 17, 2021 to inquire into and adjudge under section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), the aforesaid alleged violations by the Noticees. Pursuant to transfer of Ms. Maninder Cheema, Dr. Anitha Anoop, CGM, SEBI was appointed as Adjudicating Officer vide Communique dated June 07 2022. Pursuant to transfer of Dr. Anitha Anoop, undersigned was appointed as Adjudicating Officer ("AO") vide communique dated September 05, 2022.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

9. A show-cause notice dated May 24, 2022 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why, an inquiry should not be initiated against Noticee and penalty, if any, should not be imposed upon it under the provision of Section 15HB of SEBI Act for the aforesaid violation alleged to have been committed by it.

10. The allegations levelled against Noticee in the SCN are briefly stated as under:

    a) *BSE had issued notice to all the Trading Members (brokers) casting an obligation on the broker to, inter alia, monitor and report reversal of trades in derivatives segment. BSE notice no 20130307-21 (addressed to all the trading members) dated March 07, 2013 pertaining to "e-Boss", inter alia, indicated the list of alerts that will be generated by BSE which includes reversal of trades in derivatives segment. Further, in terms of the aforesaid notice every broker was necessarily required to frame a surveillance* *policy, inter alia, covering suspicious/manipulative activity identification and reporting process.*

b) *The aforesaid BSE notice also casts obligation on the Trading Member (Broker) to monitor and report alerts specifically mentioning the following:*

> *"*
>
> *.....*
> *The trading members are hereby further informed that the aforementioned transactional alerts are indicative in nature and the trading members can derive their own alerts in addition to the said transactional alerts as per their surveillance policy.*
>
> *……*
>
> *Monitoring and reporting:*
> *1. For effective monitoring, Trading Member shall:*
> *a. Frame a surveillance policy covering:*
> *i….*
> *ii….*
> *iii. Suspicious / Manipulative activity identification and reporting process.*
> *iv…..*
>
> *b. The surveillance policy of the Trading Member shall be approved by its Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) as the case may be.*
> *c. A quarterly MIS shall be put up to the Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) on the number of alerts pending at the beginning of the quarter, generated during the quarter, disposed off during the quarter and pending at the end of the quarter. Reasons for pendency shall be discussed and appropriate action taken. Also, the Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) shall be apprised of any exception noticed during the disposition of alerts.*
> *d. The surveillance process shall be conducted under overall supervision of its Compliance Officer.*
> *e. Designated directors / partners / proprietor / Compliance Officer would be responsible for all surveillance activities carried out by the Trading Member and for the record maintenance and reporting of such activities.*
>
> *2. Internal auditor of Trading Member shall review the surveillance policy, its implementation, effectiveness and review the alerts generated during the period of audit. Internal auditor shall record the observations with respect to the same in their report."*

c) *However, as informed by BSE vide email dated November 06, 2020, no broker had reported any suspicious transactions to exchange being executed on Stock Options* *segment of BSE during I.P. None of the brokers generated any alerts or reported any reversal of trades executed by their respective clients.*

d) *Without a system in place to identify repeated trade reversals between the same clients, the brokers facilitated those clients in executing fraudulent transactions in the stock market who transferred profits and losses to each other in a pre-meditated manner.*

e) *Trade data pertaining to these 2,91,744 non-genuine trades formed the source data for the instant case against stock brokers. Total number of contracts during the I.P. was 23,885 contracts. The details of trading in such 23,885 contracts are shown in table below:*

Table 1 - Details of trading in all contracts of BSE' Stock Options segment during the I.P.

Particulars	***TOTAL***
Number of contracts	*23,885*
Total Number of entities	*21,652*
Number of trades	*3,58,372*
Number of Non genuine trades	***2,91,744***
Number of entities involved in executing non genuine trades	***14,720***
Number of Brokers through which non-genuine trades were executed	***192***

f) *On analyzing the source data, the data was segregated based on scenarios so as to identify scenario-wise violations by a Broker and the details are given below:*

Scenario	***Particulars***	***Count of Brokers***	***Total number of non-genuine trades (both client and counterparty client)***	***Cumulative non-genuine trades through Brokers after removing duplicates (same broker for both clients)***	***As a % of total transactions***
1	*Same Broker for both clients on both legs of trade reversal*	*19*	*8,528*	*4,264*	*0.74*
2	*Different Broker for both clients on both legs of trade reversal*	*189*	*5,74,900*	*5,74,900*	*99.25*
3	*Trade reversals involving three Brokers*	*8*	*60*	*59*	*0.01*
	Total	***192****	***5,83,488***	***5,79,223***	***100***

**Note – There are 3 unique brokers appearing in Scenario 1 and the remaining 16 brokers of Scenario 1 are overlapping with 189 unique brokers appearing in Scenario 2. Accordingly, total Brokers through whom 2,91,744 non-genuine trades have been executed is 3+189 = 192 brokers. Names of 8 brokers appearing in scenario 3 are overlapping with names appearing in either Scenario 1 or Scenario 2.*

g) *The non-genuine reversal trades by Noticee was falling in the Scenario 2 as described above.*

<u>Scenario 2: Different Broker for both clients on both legs of trade reversal</u>

h) *In the instant scenario, two clients execute reversal trade through two different Brokers. For the sake of clarity, a contract is shortlisted (i.e. "JPPW15JAN10.00CEW1") and trades that were executed in this contract on January 01, 2015 is shown below:*

Table 3

SL. NO.	CLIENT PAN	CLIENT NAME	CP PAN	CP CLIENT NAME	ORDER TIME	CP ORDER TIME	TRADE TIME	TRADE RATE	TRADED QTY	MEMBER NAME	CP MEMBER NAME
1	*AAGFC5601H*	*Chanakya Broking Company*	*BSUPS7339K*	*Vitrag R Sheth*	*11:40:42*	*11:40:42*	*11:40:42*	*1.2*	*90000*	*Skung Tradelink Ltd*	*Prudent Broking Services Pvt.Ltd.*
2	*BSUPS7339K*	*Vitrag R Sheth*	*AAGFC5601H*	*Chanakya Broking Company*	*11:41:03*	*11:41:03*	*11:41:03*	*2.8*	*90000*	*Prudent Broking Services Pvt.Ltd.*	*Skung Tradelink Ltd*
3	*AAGFC5601H*	*Chanakya Broking Company*	*BSUPS7339K*	*Vitrag R Sheth*	*11:42:48*	*11:42:48*	*11:42:48*	*1.3*	*90000*	*Skung Tradelink Ltd*	*Prudent Broking Services Pvt.Ltd.*
4	*BSUPS7339K*	*Vitrag R Sheth*	*AAGFC5601H*	*Chanakya Broking Company*	*11:43:15*	*11:43:14*	*11:43:15*	*2.8*	*90000*	*Prudent Broking Services Pvt.Ltd.*	*Skung Tradelink Ltd*
5	*AAGFC5601H*	*Chanakya Broking Company*	*BSUPS7339K*	*Vitrag R Sheth*	*11:43:54*	*11:43:54*	*11:43:54*	*1.3*	*15000*	*Skung Tradelink Ltd*	*Prudent Broking Services Pvt.Ltd.*

S L. N O.	CLIE NT PAN	CLIEN T NAME	CP PAN	CP CLIEN T NAME	ORDE R TIME	CP ORDE R TIME	TRAD E TIME	TRA DE RAT E	TRA DED QTY	MEMB ER NAME	CP MEM BER NAM E
6	*BSUP S733 9K*	*Vitrag R Sheth*	*AAGF C560 1H*	*Chanak ya Broking Compa ny*	*11:44:1 7*	*11:44:1 7*	*11:44: 17*	*2.8*	*1500 0*	*Prudent Broking Service s Pvt.Ltd.*	*Skung Tradel ink Ltd*

i) *It is observed from the above table that:*

i. *In total 6 trades were executed in the contract "JPPW15JAN10.00CEW1" on January 01, 2015. Trade reversals are executed between clients Chanakya Broking Company and Vitrag R Sheth through Brokers Skung Tradelink Ltd and Prudent Broking Services Pvt. Ltd. respectively.*

ii. *Total number of non-genuine trades that were executed in the contract "JPPW15JAN10.00CEW1" were 6 (trades shown at S. No. 1 to 6 at Table 3) and total artificial volume generated through such non genuine trades was 3,90,000 units.*

iii. *The Broker-wise contribution to number of non-genuine trades and artificial volume in the above contract is as shown below:*

Table 4

S. No.	***Entity Name***	***Artificial volume through non genuine trades***	***Number of Non genuine trades***
1	*Skung Tradelink Ltd*	*3,90,000*	*6*
2	*Prudent Broking Services Pvt. Ltd.*	*3,90,000*	*6*
Total		***7,80,000***	***12***

j) *Trade reversals were executed by Chanakya Broking Company through Broker Skung Tradelink Ltd through same modus operandi on 3 instances on a same day. In a similar manner, Trade reversals were executed by Vitrag R Sheth through Broker Prudent Broking Services Pvt. Ltd. on 3 instances on a same day. Despite the repeated reversals of identical quantity and with more than 100% difference in price in less than a minute, the brokers through whom such transactions went through failed to notice them immediately or even much after the said transactions as they did not have any system in place to identify trade reversals. Though the broker may not know the counterparty client or counterparty broker in a transaction, however, the fact that certain quantity transacted by his client is getting reversed within the same day in a repeated manner should have alerted the brokers concerned.*

k) *Without a system in place to identify repeated trade reversals between the same clients, the broker facilitated its clients in executing fraudulent transactions in the stock market in a pre-meditated manner.*

l) *Since Skung Tradelink Ltd and Prudent Broking Services Pvt. Ltd. did not take necessary steps to generate alerts by putting a system in place to detect and curb reversal of trades, both Skung Tradelink Ltd and Prudent Broking Services Pvt. Ltd. failed to exercise care and diligence in the conduct of business while dealing with its respective clients.*

m) *Upon analyzing all the 5,74,900 non-genuine trades in the instant scenario, it was observed that there were 189 unique brokers through whom clients had executed trade reversals. On further analysis, it was observed that there were 14,333 clients who had executed trade reversals in various combinations among each other.*

n) *It was observed that there were numerous instances of single reversal trades in various contracts. It was felt that benefit of doubt can be given to the broker for single instances of trade reversal identified in a particular contract of a particular scrip amongst the numerous trades executed by the clients registered with the broker. Hence a cut off of at least 4 or more transactions (2 cycles of reversals between the same set of PAN numbers) on the same day in a particular contract between two unique PAN numbers was applied and it was observed that there are 5,316 unique set of PAN numbers who have executed repeated reversals with at least 4 transactions or more through 125 different Brokers including the Noticee.*

o) *Hence, it is alleged that Noticee, being one of the aforementioned 125 brokers, failed to exercise care and diligence in the conduct of business while dealing with its clients and therefore not in compliance with Schedule II A (2) of the Code of Conduct for Stock Brokers r/w regulation 9 (f) of the Broker Regulation.*

11. The SCN was sent to Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') and digitally signed email dated May 24, 2022 and the SCN was duly served on Noticee through SPAD and digitally signed email. Noticee was given twenty one (21) days' time to make its submissions in respect of the allegations made in the SCN.

12. However, no reply was received from Noticee. Thereafter, vide email dated June 24, 2022, Noticee was advised to file its reply on or before July 01, 2022 and an opportunity of personal hearing was granted to Noticee before the erstwhile Adjudicating Officer, Dr. Anitha Anoop on July 06, 2022. Vide email dated June 25, 2022, Noticee submitted its reply to SCN. However, it is noted that the Noticee failed to appear for the hearing scheduled on July 06, 2022.

13. Thereafter, vide letter dated November 30, 2022, Noticee was informed regarding SEBI settlement scheme for Stock Brokers, 2022 framed by SEBI wherein onetime opportunity of settlement was provided by SEBI to stock brokers through whom trade reversals were executed by various clients/proprietary trades executed by the Stock Broker in the Illiquid Stock Options segment of BSE during the IP and against whom enforcement proceedings has been initiated and is pending. The aforesaid letter dated November 30, 2022 was sent and duly served to the Noticee through SPAD and email dated December 01, 2022. The aforesaid settlement scheme had commenced on December 19, 2022 and ended on January 19, 2023. However, it is noted that Noticee has not availed the onetime opportunity of settlement provided by SEBI to stock brokers.

14. In view of the above, vide Hearing Notice dated March 08, 2023, Noticee was granted an opportunity of personal hearing on March 14, 2023. The aforesaid Hearing Notice was duly served on the Noticee through SPAD on March 13, 2023 and email dated March 08, 2023. However, it is noted that Noticee did not avail the said opportunity of hearing on March 14, 2023.

15. The submissions by Noticee are reproduced as under:

"

1. *The list sent by you pertains to trades done by our clients in past where only one leg of the trade is done through our member code and another leg through some other member. As members of the exchange, we have no way to understand the complete nature of trade unless both the legs are traded through us.*
2. *Also from the list sent by you, trades appear to be having wide time gap between two-time stamps. It would be difficult for us to find out the*

genuineness of trade prices as they are subject to market volatility and there is no system which could automatically prohibit orders as long as they meet the criteria of DPR.

3. *Also unlike Exchange, we would never get to know who our counterparty broker or client code is; we would never be able to confirm the non-genuineness of trade just by looking at it one-sided.*
4. *As a broker, all we have earned is a few 100 rupees of brokerage out of these trades. Also, these clients stopped trading with us long ago, there is no way we could recover any penalty amount levied by your good self. It would be unfair for the regulator to impose any amount of penalty on this matter for no fault of ours"*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

16. The issues that arise for consideration in the present case are:

Issue No.1 Whether Noticee has violated Schedule II A (2) of Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations?

Issue No.2 Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act?

Issue No.3 If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

17. Before proceeding, it is pertinent to refer to the relevant provision of the Broker Regulations which was in force at the time of impugned transactions, which are reproduced as under:

Relevant provisions of Broker Regulations:

Conditions of registration.

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

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

A. General

(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*

<u>Issue No. I- Whether Noticee has violated Schedule II A (2) of Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations</u>?

18. It was alleged that Noticee had failed to exercise care and diligence in the conduct of its business while dealing with its clients and therefore, it was alleged that Noticee has violated the provisions of Schedule II A (2) of Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations.

19. It is noted from the Investigation Report that a total of 18 repeated trade reversal transactions were executed by clients through Noticee as Broker and an artificial volume of 52,000 units were generated through such repeated trade reversals. The details of such transactions/trades are given below:

Sl. No.	Trade Date	Client Name	CP Client Name	Order Time	CP Order Time	Trade Time	Traded Qty	Name of the Contract	Member Name	CP Member Name
1	16/06/2014	PUSHPABAI PRABHUDAYAL AGRAWAL	SHRADDHA INVESTMENT	14:01:28.544463	14:01:29.289285	14:01:29.289285	5,500	SIEM14JUN880.00CE	EXCLUSIVE SECURITIES LTD.	ATS SHARE BROKERS PVT. LTD.
2	16/06/2014	SHRADDHA INVESTMENT	PUSHPABAI PRABHUDAYAL AGRAWAL	14:01:44.073912	14:01:43.561802	14:01:44.073912	5,500	SIEM14JUN880.00CE	ATS SHARE BROKERS PVT. LTD.	EXCLUSIVE SECURITIES LTD.
3	16/06/2014	PUSHPABAI PRABHUDAYAL AGRAWAL	SHRADDHA INVESTMENT	14:02:36.961735	14:02:37.471316	14:02:37.471316	3,000	SIEM14JUN880.00CE	EXCLUSIVE SECURITIES LTD.	ATS SHARE BROKERS PVT. LTD.
4	16/06/2014	SHRADDHA INVESTMENT	PUSHPABAI PRABHUDAYAL AGRAWAL	14:02:55.850501	14:02:51.354204	14:02:55.850501	3,000	SIEM14JUN880.00CE	ATS SHARE BROKERS PVT. LTD.	EXCLUSIVE SECURITIES LTD.
5	16/06/2014	SHRADDHA INVESTMENT	KOMAL MANOJ AGRAWAL	13:56:55.702855	13:56:54.826138	13:56:55.702855	500	SIEM14JUN900.00CE	ATS SHARE BROKERS PVT. LTD.	EXCLUSIVE SECURITIES LTD.

Sl. No.	Trade Date	Client Name	CP Client Name	Order Time	CP Order Time	Trade Time	Traded Qty	Name of the Contract	Member Name	CP Member Name
6	16/06/2014	KOMAL MANOJ AGRAWAL	SHRADDHA INVESTMENT	13:57:24.095286	13:57:24.683983	13:57:24.683983	500	SIEM14JUN900.00CE	EXCLUSIVE SECURITIES LTD.	ATS SHARE BROKERS PVT. LTD.
7	16/06/2014	SHRADDHA INVESTMENT	KOMAL MANOJ AGRAWAL	13:51:30.406936	13:51:29.755080	13:51:30.406936	8,000	SIEM14JUN900.00CE	ATS SHARE BROKERS PVT. LTD.	EXCLUSIVE SECURITIES LTD.
8	16/06/2014	KOMAL MANOJ AGRAWAL	SHRADDHA INVESTMENT	13:56:41.234958	13:56:43.324477	13:56:43.324477	500	SIEM14JUN900.00CE	EXCLUSIVE SECURITIES LTD.	ATS SHARE BROKERS PVT. LTD.
9	16/06/2014	SHRADDHA INVESTMENT	KOMAL MANOJ AGRAWAL	13:57:32.423973	13:57:32.106316	13:57:32.423973	500	SIEM14JUN900.00CE	ATS SHARE BROKERS PVT. LTD.	EXCLUSIVE SECURITIES LTD.
10	16/06/2014	KOMAL MANOJ AGRAWAL	SHRADDHA INVESTMENT	13:46:53.323862	13:46:54.185882	13:46:54.185882	8,000	SIEM14JUN900.00CE	EXCLUSIVE SECURITIES LTD.	ATS SHARE BROKERS PVT. LTD.
11	24/06/2015	ANIL BERCHHA	ROULEX INVESTMENT & FINANCE PRIVATE LIMITED	13:47:45.782209	13:47:46.597701	13:47:46.597701	2,500	SUNT15JUN280.00CE	ATS SHARE BROKERS PVT. LTD.	EXCLUSIVE SECURITIES LTD.
12	24/06/2015	ANIL BERCHHA	ROULEX INVESTMENT & FINANCE PRIVATE LIMITED	13:48:39.707822	13:48:40.059585	13:48:40.059585	2,500	SUNT15JUN280.00CE	ATS SHARE BROKERS PVT. LTD.	EXCLUSIVE SECURITIES LTD.
13	24/06/2015	ROULEX INVESTMENT & FINANCE PRIVATE LIMITED	ANIL BERCHHA	13:48:06.541307	13:48:06.150957	13:48:06.541307	2,500	SUNT15JUN280.00CE	EXCLUSIVE SECURITIES LTD.	ATS SHARE BROKERS PVT. LTD.
14	24/06/2015	ROULEX INVESTMENT & FINANCE PRIVATE LIMITED	ANIL BERCHHA	13:48:53.323742	13:48:53.043243	13:48:53.323742	2,500	SUNT15JUN280.00CE	EXCLUSIVE SECURITIES LTD.	ATS SHARE BROKERS PVT. LTD.
15	28/10/2014	SUSHILA JAIN	VAIBHAV PIPES PRIVATE LIMITED	14:27:48.191435	14:27:48.563711	14:27:48.563711	1,750	LUPL14OCT1320.00CE	ARIHANT CAPITAL MARKETS LTD.	ATS SHARE BROKERS PVT. LTD.
16	28/10/2014	VAIBHAV PIPES PRIVATE LIMITED	SUSHILA JAIN	14:25:28.300986	14:25:26.867510	14:25:28.300986	1,750	LUPL14OCT1320.00CE	ATS SHARE BROKERS PVT. LTD.	ARIHANT CAPITAL MARKETS LTD.
17	28/10/2014	SUSHILA JAIN	VAIBHAV PIPES PRIVATE LIMITED	14:31:48.016188	14:31:48.243431	14:31:48.243431	1,750	LUPL14OCT1320.00CE	ARIHANT CAPITAL MARKETS LTD.	ATS SHARE BROKERS PVT. LTD.
18	28/10/2014	VAIBHAV PIPES PRIVATE LIMITED	SUSHILA JAIN	14:30:32.043166	14:30:31.736389	14:30:32.043166	1,750	LUPL14OCT1320.00CE	ATS SHARE BROKERS PVT. LTD.	ARIHANT CAPITAL MARKETS LTD.
	Total traded quantity/ Total artificial volume generated						52,000			

20. It is noted from the above table that the trades involve 4 contracts and for each contract two clients executed reversal trades through two different brokers wherein Noticee was Broker for one leg of the transaction/trade. It is noted that on June 16,

2014, in the contract viz. SIEM14JUN880.00CE, four (4) non-genuine trades (2 cycles of reversal) were executed between clients, Pushpabai Prabhudayal Agarwal and Shraddha Investment through Brokers, Exclusive Securities Limited and ATS Share Brokers Private Limited i.e. Noticee respectively and through these 4 non-genuine trades artificial volume of 17,000 units were generated. Similarly, fourteen (14) non-genuine trades (7 cycles of reversal) were executed by clients through Noticee as Broker in other three (3) contracts which created an artificial volume of 35,000 units. Therefore, it is noted that a total of eighteen (18) non-genuine trades (9 cycles of reversal) were executed by clients through Noticee as Broker and an artificial volume of 52,000 units were generated in 4 contracts during the IP. It is noted from the submission of Noticee that Noticee has not disputed the impugned non-genuine trades executed through it by its clients.

21. In its submission, Noticee has *inter alia* contended that only one leg of trade is done by its clients through its member code and another leg of trade was done through some other members. Noticee also stated that as the members of exchange, it has no way to understand the complete nature of trade unless both legs are traded through it and unlike exchange, they cannot get to know about the counterparty broker or client code and cannot confirm the non-genuineness of trade just by looking at it one sided. In this regard, though the broker i.e. Noticee may not know the counterparty client or counterparty broker in a transaction, however, the fact that certain quantity transacted by its client is getting reversed within the same day in a repeated manner should have alerted the brokers concerned. It is further noted that as per the BSE Notice No. 20130307-21 dated March 07, 2013 addressed to all Trading Members of BSE having subject "Surveillance Obligations for Trading Members" pertaining to "e-Boss" *inter alia* provided an indicative list of alerts that will be generated by BSE which includes reversal of trades in cash and derivative segment. Further, the aforesaid Notice of BSE casts obligation on the Trading Member (Broker) i.e. Noticee to monitor and report alerts specifically mentioning the following:

"
.....

The trading members are hereby further informed that the aforementioned transactional alerts are indicative in nature and the trading members can derive their own alerts in addition to the said transactional alerts as per their surveillance policy.

……

Monitoring and reporting:

1. For effective monitoring, Trading Member shall:

a. Frame a surveillance policy covering:

i….

ii….

iii. Suspicious / Manipulative activity identification and reporting process.

iv…..

b. The surveillance policy of the Trading Member shall be approved by its Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) as the case may be.

c. A quarterly MIS shall be put up to the Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) on the number of alerts pending at the beginning of the quarter, generated during the quarter, disposed off during the quarter and pending at the end of the quarter. Reasons for pendency shall be discussed and appropriate action taken. Also, the Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) shall be apprised of any exception noticed during the disposition of alerts.

d. The surveillance process shall be conducted under overall supervision of its Compliance Officer.

e. Designated directors / partners / proprietor / Compliance Officer would be responsible for all surveillance activities carried out by the Trading Member and for the record maintenance and reporting of such activities.

2. Internal auditor of Trading Member shall review the surveillance policy, its implementation, effectiveness and review the alerts generated during the period of audit. Internal auditor shall record the observations with respect to the same in their report."

22. Therefore, it is noted that in terms of the aforesaid BSE notice, Noticee was necessarily required to frame a surveillance policy, *inter alia*, covering suspicious/manipulative activity identification and reporting process. Further, it is noted that vide email dated November 06, 2020, BSE had confirmed that no broker including Noticee had reported any suspicious transactions to BSE being executed on Stock Options segment of BSE during the IP.

23. In view of the above, Noticee, being a Broker, was required to have system in place which monitor and report alerts regarding such reversal trades. However, as noted from the submission, Noticee did not have such system in place to detect and curb

reversal of trades. Therefore, it is evident from the submission of Noticee that Noticee has admitted to the fact that it has not implemented any such system in place. Therefore, it is noted that Noticee has failed to exercise due care and diligence in the conduct of their business while dealing with their respective clients. Therefore, the contention of Noticee in this regard cannot be accepted.

24. Further, Noticee, in its submission *inter alia* also contended that trades appear to be having wide time gap between two-time stamps and it would be difficult for them to find out the genuineness of trade prices as they are subject to market volatility and there is no system which could automatically prohibit orders as they meet the criteria of DPR. In this regard, it is relevant to refer to the trades done by clients through Noticee as Broker and the details of trades executed by clients through Noticee as Broker under the contract viz. SIEM14JUN880.00CE is given below:

Sl. No.	Trade Date	Client Pan	Client Name	CP Client Pan	CP Client Name	Order Time	CP Order Time	Trade Time	Traded Qty	Member Name	CP Member Name
1	16/06/2014	AAKPA2485R	PUSHPABAI PRABHUDAYAL AGRAWAL	ABHFS8636G	SHRADDHA INVESTMENT	14:01:28.544463	14:01:29.289285	14:01:29.289285	5500	EXCLUSIVE SECURITIES LTD.	ATS SHARE BROKERS PVT. LTD.
2	16/06/2014	ABHFS8636G	SHRADDHA INVESTMENT	AAKPA2485R	PUSHPABAI PRABHUDAYAL AGRAWAL	14:01:44.073912	14:01:43.561802	14:01:44.073912	5500	ATS SHARE BROKERS PVT. LTD.	EXCLUSIVE SECURITIES LTD.
3	16/06/2014	AAKPA2485R	PUSHPABAI PRABHUDAYAL AGRAWAL	ABHFS8636G	SHRADDHA INVESTMENT	14:02:36.961735	14:02:37.471316	14:02:37.471316	3000	EXCLUSIVE SECURITIES LTD.	ATS SHARE BROKERS PVT. LTD.
4	16/06/2014	ABHFS8636G	SHRADDHA INVESTMENT	AAKPA2485R	PUSHPABAI PRABHUDAYAL AGRAWAL	14:02:55.850501	14:02:51.354204	14:02:55.850501	3000	ATS SHARE BROKERS PVT. LTD.	EXCLUSIVE SECURITIES LTD.

25. It is noted from the above table that a trade was executed between client, Pushpabai Prabhudayal Agarwal through Broker, Exclusive Securities Limited and the counter party client, Shraddha Investment through Broker, ATS Share Brokers Private Limited i.e. Noticee at trade time 14:01:29 for a quantity of 5,500 units on June 16, 2014. It is also noted that aforesaid trade was reversed between client, Shraddha Investment through Broker, ATS Share Brokers Private Limited i.e. Noticee and the counter party client, Pushpabai Prabhudayal Agarwal through Broker, Exclusive Securities Limited at trade time 14:01:44 for the same quantity of 5,500 units on June 16, 2014. It is noted from the aforesaid transactions that the

trade and reversal trade was happened within a very short span of approximately 15 seconds. Similarly, another set of trade and reversal trade was executed between same set of clients through same set of Brokers for a quantity of 3,000 units within a short span of approximately 17 seconds. Therefore, it is noted that the time gap between the trades and reversal trades were less than half a minute. Therefore, it is noted that despite such reversal transactions were undertaken by clients through Noticee, Noticee failed to notice them immediately or even much after the said transactions, as it did not have any system in place to identify trade reversals. It is also noted from the submission of Noticee that Noticee has accepted that it did not have a system to find out the genuineness of trade prices especially to identify the reversal trades. I find that by not having a system in place to identify the reversal trades, Noticee allowed its clients to repeatedly execute reversal trades in a contract. Therefore, the contention of Noticee in this regard cannot be accepted.

26. Noticee, *inter alia* also submitted that as a Broker, it has earned a few 100 rupees of brokerage out of these trades and these clients stopped trading with it long ago and it would be unfair for the regulator to impose any penalty on this matter for no fault of it. In this regard, it is noted that despite such reversal transactions being undertaken by clients through Noticee, Noticee failed to notice them immediately or even much after the said transactions, as they did not have any system in place to identify trade reversals. It is also noted that by not having a system in place to identify the reversal trades, Noticee facilitated its clients to repeatedly execute reversal trades in a contract. Therefore, the submission of Noticee in this regard cannot be accepted.

27. In view of the above, it is noted that a total of eighteen (18) non-genuine trades (9 cycles of reversal) were executed by clients through Noticee as Broker and an artificial volume of 52,000 units were generated in 4 contracts during the IP. However, Noticee neither had a system to monitor such trading activities including the reversal trades nor reported the trades including the reversal trades to BSE in terms of the BSE Noticee dated March 07, 2013 as noted from BSE email dated November 06, 2020. Therefore, Noticee had failed to exercise care and diligence

in the conduct of its business while dealing with its clients. In view of the above, I find that the allegation that Noticee has violated the provisions of Schedule II A (2) of Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations stands established.

<u>Issue No. 2- Does the violation attract monetary penalty under Section 15HB of SEBI Act?</u>

28. In this regard, I place reliance on the judgement of Hon'ble Supreme Court of India the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} wherein Hon'ble Supreme Court 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. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''*

29. Therefore, in view of the above judgments and considering that Noticee violated the provisions of Schedule II A (2) of Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations, as established in the foregoing paragraphs, I find that Noticee would be liable for monetary penalty under Section 15HB of the SEBI Act. The text of Section 15HB of the SEBI Act is reproduced below:

<u>SEBI Act</u>

Penalty for contravention where no separate penalty has been provided.

15HB. *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 shall not be less than one lakh rupees but which may extend to one crore rupees.*

<u>Issue No.3 - What should be the quantum of monetary penalty</u>?

30. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under:-

<u>SEBI Act</u>

Factors to be taken into account while adjudging quantum of penalty.

Section 15J *- While adjudging quantum of penalty under section 15-I, 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.

Explanation*- For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

31. I note that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on the part of the said Noticee. However, it is pertinent to note that the role of a Broker/Trading Member(TM) is crucial to the development of the securities market, as the broker is the first mile of contact for the majority of the investors. In this regard, the role of a Broker is crucial as a facilitator of investors into the securities market. So, it is of utmost importance that every Broker abides by the relevant regulations, provisions of SEBI/ Stock Exchange circulars and various guidelines issued by SEBI/ Stock Exchanges. The non-compliances on the part of the

Noticee as brought out in the preceding paragraphs clearly shows that it has failed to exercise due care and diligence in the conduct of their business while dealing with their respective clients.

ORDER

32. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in exercise of powers conferred upon me under Section 15-I of the SEBI Act 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) on Noticee i.e. ATS Share Brokers Private Limited, under the provision of Section 15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

33. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

    ENFORCEMENT → Orders → Orders of AO → PAY NOW

34. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

35. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Place: Mumbai **AMAR NAVLANI**
Date: March 31, 2023 **ADJUDICATING OFFICER**