

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

ORDER

UNDER REGULATION 28(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST TROPICAL SECURITIES AND INVESTMENTS PRIVATE LIMITED IN THE MATTER OF VXL INSTRUMENTS LIMITED

1. Pursuant to an investigation into the dealings in the shares of VXL Instruments Limited (hereinafter referred to as VXL), the Securities and Exchange Board of India (hereinafter referred to as SEBI) had initiated an enquiry, vide order dated November 14, 2003 against the stock broker, Tropical Securities and Investments Private Limited, trading member, Bombay Stock Exchange Limited (hereinafter referred to as BSE), in terms of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed). Tropical Securities and Investments Private Limited is hereinafter referred to as the stock broker. The Enquiry Officer found that the stock broker had contravened Regulation 4(a) and (b) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as the PFUTP Regulations) and Clause A(3), (4) and (5) of the Code of Conduct specified in Schedule II of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the Stock Brokers Regulations) and vide Report dated February 15, 2005, recommended that the certificate of registration of the stock broker be suspended for a period of six months.

2. Thereafter, SEBI vide notice dated March 1, 2005, enclosing therewith a copy of the Enquiry Report, called upon the stock broker to show cause as to why the recommended action should not be taken against it. The said notice also informed the stock broker that in the event of action being taken under the said notice, consequential action under the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004 may follow. The stock broker replied to the aforesaid notice, vide letters dated March 18, 2005 and June 20, 2005. The stock broker made further submissions, vide letter dated July 14, 2006, pursuant to a hearing before my predecessor. While the instant proceeding was in progress, the stock broker had filed an application for passing of a consent order in terms of SEBI Circular dated April 20, 2007. Therefore, the present proceeding was kept in abeyance and pursuant to the rejection of the said application, the same was resumed and the stock broker was granted another opportunity of hearing on February 3, 2010. On the said day, Mr. Bhupen C. Dalal, Advocate appeared on behalf of the stock broker and made submissions. Mr. Milan B. Dalal, director of the stock broker and Mr. Deepak Sheth were also present in the hearing. The learned advocate while making his submissions, requested SEBI to dispose of the proceedings pending against the group entities. The advocate also undertook to file written submissions at the earliest. Thereafter, the learned advocate forwarded the written submissions of the stock broker, vide letters dated September 22, 2010 and February 4, 2011. The submissions made by the stock broker are considered and discussed subsequently in this Order.

3. I have considered the Enquiry Report, the replies/written submissions of the stock broker, the oral submissions made during the hearing and other material available on record. The Enquiry Officer had found that the stock broker had contravened Regulation 4(a) and (b) of the PFUTP Regulations and Clause A(3), (4) and (5) of the Code of Conduct specified in Schedule II of the Stock Brokers Regulations. The Enquiry Report, in pages 13 to 15 had given the buy and sell quantities (settlement number-wise), traded by the stock broker for its various

clients including its group entities, namely Harbinger Trading Company Private Limited, M/s. Aditi A. Dalal and Shriya Capital Services Private Limited. The Enquiry Officer had observed that majority of the trades were done for the above named clients and the same indicated a concentrated trading activity in the shares of VXL and a concerted effort on the part of the stock broker with its other entities. The Enquiry Report had also mentioned the details of the alleged matched and structured transactions of the stock broker with M/s. Pawankumar Parmeshwarlal, another stock broker. In the said trades, the stock broker had traded for its associate/group entity, Harbinger Trading Company Private Limited. The Enquiry Officer further observed that the stock broker had also indulged in matched transactions with Lallubhai Ranchodas Share Brokers Private Limited. From the details of such trades mentioned in the Enquiry Report, I find that the client Harbinger Trading Company Private Limited was buying and selling through the stock broker (on the buy side) and through Lallubhai (on the sell side) in respect of the same set of transactions. While noting the submission of the stock broker that, the volumes so created were due to repeated transactions for the purpose of funding and it did not have any intention of entering into fictitious trades, the Enquiry Officer has held that the creation of artificial volume was apparent on the face of the record. The Enquiry Officer had observed *“I therefore, hold that these are fictitious trades not reflecting the natural price determination of mechanism of the stock exchange. As admitted by the broker these trades were undertaken not for the purpose of trading in securities but only for the purpose of financing. These transactions defy the traditional anonymous trading mechanism envisaged in the stock exchange trading mechanism.....”*

4. As regards the cross deals executed by the stock broker for its associates, the Enquiry Officer has observed that the stock broker did not dispute those transactions and that the stock broker stated that it was a funding transaction to tide over the financial commitments to the stock exchange. With respect to the issue whether the stock broker had indulged in financing transactions, the Enquiry Officer has observed as below:

“The modus operandi for the purported financing transactions is that M/s. Tropical sold shares to M/s. Choudharies on spot/off market basis. To safeguard the financing made available by M/s. Choudharies to M/s. Tropical, M/s. Choudharies used to give only 70% to 80% advance and the rest amount was given after the finalization of price. For this financial assistance they used to charge 1% of the amount given. These shares which were purchased in spot were sold immediately at the bolt so that they get the protection of settlement guarantee fund of the exchange even if the buyer fails to pay the money to the exchange. It is clear from the trade log clear that almost all the shares which were sold by the clients of Pawankumar the counter party trading member was the broker. Therefore, the shares would in turn come back from M/s. Choudharies to M/s. Tropical. This cycle of financing and thereby entering into matched transactions to safeguard their interest continued settlement after settlement during the period of investigation.

The broker did not contradict the above sequence of events. It is also an admitted position that broker entered into financing transactions. The broker’s argument that these transactions did not result in any loss to any investor or any broker has been noted in this context. However, it is to be kept in mind that it is very difficult to pin point the exact loss caused to a single individual when a scrip has been deliberately manipulated either to create volumes or rise the prices. The broker stated during the hearing that he had an alternative way of getting finance from the market i.e. by selling the shares he was holding but since he was of the view that at that particular point of time these scrips were under priced and the intrinsic value of the scrip was very high and that once he came out of temporary financial requirements he would have been in a better position to exit at a higher price. This position of the broker suggest that to make a profit, or to avoid a loss the broker has indulged in this kind of fictitious and artificial trades not reflected in market trend. I therefore hold the broker guilty of creating a misleading appearance of liquidity in the scrip and thereby enabled his clients and associates to off load in an illiquid scrip. The broker has been instrumental in creating artificial volumes in the scrip which is detrimental to the investors interest. Thus, the broker has misused the exchange mechanism, to serve his vested interest, thereby putting the investors at large, to undue risk”.

5. The stock broker has been found to have created artificial volumes and indulged in financing transactions. In its reply dated March 18, 2005, the stock broker has submitted that along with its group associates and clients, it had entered into series of transactions in the shares of VXL during the investigation period for the purpose of creating temporary funding arrangements for their pay-in obligations to the stock exchanges. It further submitted that the group was passing through severe hardship and financial crisis and had to opt for the method. Similar submissions were made in the reply dated June 20, 2005 and July 14, 2006, by the stock broker. In its reply dated July 14, 2006, the stock broker *inter alia* submitted “*We had huge bank liabilities and the same stand repaid as on March 2006....And therefore we had to resort to borrowings of which one of the means, we resorted to spot funding on the floor of the exchange in the year 2000-01 just before we*

defaulted....There has not been the case of SEBI and neither have we resorted to any other violations except excessive volumes in ill liquid scrip's.” The stock broker, in its written submissions dated September 22, 2010 had *inter alia* submitted that it went through heavy financial difficulties and had to resort to borrowings of which one of the means was “spot funding” on the floor of the stock exchange in the year 2000/2001, solely for the purpose of meeting its pay-in obligations to the respective stock exchanges. The stock broker, vide written submissions dated February 4, 2011 stated that it had for almost the same period, transacted in few other scrips and the purpose behind the same was “financing” only. Therefore, from the submissions made by the stock broker, it is evidently clear that the transactions executed by the stock broker in the shares of VXL were done only for the purpose of funding and to meet its pay-in obligations to the stock exchanges. The trades were not executed for the genuine purposes of buy or sell shares. There was thus, no transfer of beneficial transfer of shares so traded. The trades of the stock broker created artificial volumes in the shares of VXL during the relevant period. Further, I note that there were price fluctuations in the shares of VXL during the relevant period. The clients of the stock broker, namely, Harbinger Trading Company Private Limited, M/s. Aditi A. Dalal and Shriya Capital Services Private Limited were already found to have contravened the relevant provision of the PFUTP Regulations and have been restrained from accessing the securities market and prohibited from dealing in securities vide an earlier Order of SEBI dated January 17, 2011. In view of the foregoing, I find that the stock broker has contravened Regulation 4(a) and (b) of the PFUTP Regulations. Further, the stock broker by indulging in non-genuine transactions in the shares of VXL during the relevant period had contravened Clause A (3) and (4) of the Code of Conduct for stock brokers specified in the Stock Brokers Regulations. By not abiding with the statutory provisions in this regard, the stock broker has also contravened Clause A (5) of the Code of Conduct.

6. The present enquiry proceeding has been initiated under the provisions of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. The said Regulations was subsequently repealed with effect from the notification of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and therefore, this Order is being passed under the corresponding provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

7. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulations 28(2) and 38(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby suspend the certificate of registration of the stock broker, Tropical Securities and Investments Private Limited (Registration No. INB010993738), trading member, the Bombay Stock Exchange Limited, for a period of two weeks.

8. As the Securities and Exchange Board of India had already suspended the certificate of registration of the aforesaid stock broker, vide an Order dated December 7, 2009, till the time it pays the outstanding fees to the Securities and Exchange Board of India, the penalty imposed in paragraph 7 above would run concurrently with immediate effect.

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

**PLACE: MUMBAI
DATE: MARCH 8, 2011**