WTM/MPB/EFD-1-DRA-IV/ 45 /2019

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11, 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In Re: SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and SEBI (Stock Brokers and Sub Brokers) Regulations, 1992

In respect of

Sl. No.	NAME	PAN
1.	AKG Securities and Consultancy Private Limited	AAACA7549K
2.	Adroit Financial Services Private Limited	AABCA1156D
3.	Crosseas Capital Services Private Limited	AACCC5470H

In the matter of IPO of Shilpi Cable Technologies Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) suo-moto initiated an investigation in the matter relating to the Initial Public Offer (hereinafter referred to as **'IPO'**) of Shilpi Cable Technologies Limited (hereinafter referred as **'SCTL' / 'Company'**) to ascertain whether there was any violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) and the Rules and Regulations made thereunder and possible violation of provision of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("hereinafter referred to as **'PFUTP Regulations'**) and SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as **'Brokers Regulations, 1992'**) read with SEBI (Stock Brokers and Sub-Brokers) (Second

Amendment) Regulations, 2013 [hereinafter referred to as **'Brokers (Second Amendment) Regulations, 2013**]. The period of investigation was from April 08, 2011 to April 13, 2011 (hereinafter referred to as '**Investigation Period' / 'IP'**). During the investigation period the scrip was traded on the Bombay Stock Exchange Limited (hereinafter referred to as '**BSE'**) and National Stock Exchange of India Limited (hereafter referred to as **'NSE'**).

2. The investigation revealed that during the investigation period, AKG Securities and Consultancy Private Limited (hereinafter referred to as **'AKG' / 'Noticee No.1'**) had executed self-trades on BSE through broker Adroit Financial Services Private Limited (hereinafter referred to as **'Adroit' / 'Noticee No.2'**) and Crosseas Capital Services Private Limited, broker (hereinafter referred to as **'Crosseas' / 'Noticee No.3'**) had executed self-trades on BSE and NSE in its proprietary account.

SHOW CAUSE NOTICE

3. A common Show Cause Notice (hereinafter referred to as **'SCN'**) dated April 05, 2017 was issued to the AKG, Adroit and Crosseas (hereinafter collectively referred to as **"Noticees"**) in the matter of SCTL *alleging* that:
   3.1. AKG has violated Sections 12A(a),(b),(c) of SEBI Act read with Regulations 3 (a),(b),(c) and (d), 4 (1), 4 (2) (a) and (g) of PFUTP Regulations, 2003;
   3.2. Adroit has violated Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Brokers Regulations, 1992 read with Regulation 9 of Brokers (Second Amendment) Regulations, 2013;
   3.3. Crosseas has violated Sections 12A(a),(b),(c) of SEBI Act read with Regulations 3 (a),(b),(c) and (d), 4 (1), 4 (2) (a) and (g) of PFUTP Regulations, 2003 and Clauses A (3), (4) & (5) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Brokers Regulations, 1992 read with Regulation 9 of Brokers (Second Amendment) Regulations, 2013

SCN also state that SEBI had initiated actions against AKG, Adroit and Crosseas for violations relating to self-trades in other scrips on several occasions (repetitive nature). The SCN was delivered to all the Noticees.

ALLEGATIONS IN BRIEF:

4. SCTL came out with an IPO by way of an offer of 80,98,145 equity shares of Rs. 10/- each at issue price of Rs. 69/- per equity share, resulting into aggregate issue size of Rs. 55.87 Crore. The scrip of SCTL got listed on BSE and NSE on April 08, 2011. On BSE, during the investigation period, the average trading volume in the scrip was 1,54,35,186 shares and opening price was Rs. 78.35 and closing price was Rs. 44.85. On NSE, during the investigation period, average trading volume in the scrip was 2,12,56,422 shares and opening price was Rs. 78 and closing price was Rs. 44.80.

At BSE:

5. During the investigation period, following is noted:

Client Concentration:

5.1. Top 10 buy clients accounted for 1,66,45,201 shares (35.95% of market volume) and top 10 sell clients accounted for 1,67,55,205 shares (36.19% of market volume).

5.2. From the details of top 10 buy clients and sell clients concentration, it is noted that Crosseas, AKG and Adroit were the top 3 contributors in gross buy and in gross sell. The details are as follows:

Buy Client Name	Quantity	Percentage of Total Traded Volume	Sell Client Name	Quantity	Percentage of Total Traded Volume
Crosseas	65,40,333	14.12	Crosseas	65,29,667	14.10
AKG	32,27,147	6.97	AKG	32,27,147	6.97
Adroit	12,78,406	2.76	Adroit	12,78,406	2.76

Broker Concentration:

5.3. Top 10 buy brokers accounted for 1,97,01,433 shares (42.55% of market volume) and top 10 sell brokers accounted for 1,96,37,197 shares (42.41% of market volume).

5.4. From the details of top 10 buy broker and sell broker concentration, it is noted that Crosseas and Adroit were the top 2 contributors in gross buy and in gross sell. The details are as follows

Buy Broker Name	Quantity	Percentage of Total Traded Volume	Sell Broker Name	Quantity	Percentage of Total Traded Volume
Crosseas	65,45,433	14.14	Crosseas	65,34,767	14.11
Adroit	45,95,694	9.93	Adroit	45,88,944	9.91

Self-trades:

5.5. Crosseas trading in its proprietary account and AKG trading through Adroit had entered into self-trades on several occasions. The details of self-trade are as follows:

Entity Name	Broker On Both Buy & Sell Side	Total Self Trade Volume	Total Self Trade Count	No of days on which self trades done	% Of Self Traded Qty. To Market Vol.	Net LTP contribution by self trades
Crosseas	Crosseas	8,37,320	10,528	3	1.81	-15.45
AKG	Adroit	79,986	103	3	0.17	0

<u>At NSE:</u>

6. During the investigation period, following is noted:

Client Concentration:

6.1. Top 10 buy clients accounted for 1,69,35,311 shares (26.55% of market volume) and top 10 sell clients accounted for 1,75,95,606 shares (27.59% of market volume).

6.2. From the details of top 10 buy clients and sell clients concentration, it is noted that Crosseas had highest contribution in gross buy and in gross sell. The details are as follows:

Buy Client Name	Quantity	Percentage of Total Traded Volume	Sell Client Name	Quantity	Percentage of Total Traded Volume
Crosseas	66,02,747	10.35	Crosseas	66,13,226	10.37

Broker Concentration:

6.3. Top 10 buy brokers accounted for 2,15,53,832 shares (33.8% of market volume) and top 10 sell brokers accounted for 2,12,05,279 shares (33.25% of market volume).

6.4. From the details of top 10 buy broker and sell broker concentration, it is noted that Crosseas had highest contribution in gross buy and in gross sell. The details are as follows

Buy Broker Name	Quantity	Percentage of Total Traded Volume	Sell Broker Name	Quantity	Percentage of Total Traded Volume
Crosseas	66,06,347	10.36	Crosseas	66,15,226	10.37

Self-trades:

6.5. Crosseas trading in its proprietary account had entered into self-trades on several occasions. The details of self-trade are as follows:

Entity Name	Broker On Both Buy & Sell Side	Total Self Trade Volume	Total Self Trade Count	No of days on which self trades done	% Of Self Traded Qty. To Market Vol.	Net LTP contribution by self trades
Crosseas	Crosseas	5,85,039	7,276	3	0.92	-13.85

7. Therefore, it was *alleged* in the SCN that:

7.1. AKG had created misleading appearance of trading in the scrip of SCTL without intention of change in ownership of such security by entering into self-trades repeatedly on BSE. Hence, AKG had violated Sections 12A(a),(b),(c) of SEBI Act read with Regulations 3 (a),(b),(c) and (d), 4 (1), 4 (2) (a) and (g) of PFUTP Regulations, 2003.

7.2. Adroit had failed to exercise due skill and care and diligence while acting as broker and counterparty broker for self-trades in trading account of AKG. Hence, Adroit had violated Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Brokers Regulations, 1992 read with Regulation 9 of Brokers (Second Amendment) Regulations, 2013.

7.3. Crosseas had created misleading appearance of trading in the scrip of SCTL without intention of change in ownership of such security by entering into self-trades repeatedly on BSE and NSE. Hence, Crosseas had violated Sections 12A(a),(b)(c) of

SEBI Act read with Regulations 3 (a),(b),(c) and (d), 4 (1), 4 (2) (a) and (g) of PFUTP Regulations, 2003. Further, Crosseas by acting as broker and counterparty broker for self-trades in its own account on NSE and BSE, had violated Clauses A (3), (4) & (5) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Brokers Regulations, 1992 read with Regulation 9 of Brokers (Second Amendment) Regulations, 2013.

REPLY AND HEARING

8. Mindspright Legal, Authorized Representative of AKG and Adroit vide separate but identical letters dated May 03, 2017 had acknowledge the receipt of SCN dated April 05, 2017 and requested to provide legible copies of all the material /documents relied upon by SEBI in the matter including but not limited to following documents:

   8.1. Soft copy of the complete trade log for the trades executed by individuals / entities in the scrip of SCTL during the investigation period i.e. April 08, 2011 to April 13, 2011 on BSE & NSE.
   8.2. Copy of investigation report prepared by SEBI.
   8.3. Copy of letters sent by Ministry of Finance to SEBI and by SEBI to the Ministry of Finance when Members of Parliament questions SEBI's selective action against brokers for executing self-trades.

9. Crosseas vide letter dated April 24, 2017 acknowledge the receipt of SCN dated April 05, 2017 and stated that SEBI before Hon'ble SAT in order dated February 10, 2017 in the Appeal No. 104 of 2015 had represented that they are still reconsidering their view/action policy on Self-Trade matters. Crosseas further stated that the SCN was illegal, since SEBI had not formalize its enforcement action policy in self-trades, therefore, if SEBI has already formulated/revised its enforcement action policy in self-trades matters then SEBI was requested to provide the documented policy to them. Crosseas further requested to provide the copy of reply given by SEBI to Hon'ble Members of Parliament on SEBI's

selective action against brokers for executing self-trades. In addition to it, Crosseas requested the inspection of list of documents mentioned in its letter dated April 24, 2017.

10. SEBI vide letter dated May 23, 2017 had provided the copy of investigation report along with annexures to Mindspright Legal, authorized representative of AKG and Adroit and stated that the documents mentioned at paragraph 8.1 above forms the part of investigation report and further stated that no other documents were relied upon by SEBI to issue the aforesaid SCN in the matter.

11. SEBI vide letter dated May 24, 2017 to Crosseas, had provided the copy of SEBI's policy on self-trades and granted the opportunity of inspection of documents on June 09, 2017.

12. Mindspright Legal, Authorized Representative of AKG and Adroit vide letter dated May 25, 2017 stated that Annexures 7 to 16 of the investigation report which were provided in Compact Disc were not accessible to them, therefore, requested SEBI to provide the said annexures in its entirety. Further, Mindspright Legal once again requested to provide the documents mentioned at paragraph 8.1 and 8.3 above to them.

13. SEBI vide letter dated May 30, 2017 to Mindspright Legal, Authorized Representative of AKG and Adroit had once again provided the copy of annexures 7 to 16 of the investigation report in compact disc and also provided them with a copy of SEBI's policy on self-trades. SEBI vide said letter dated May 30, 2017 stated that the documents sought by AKG and Adroit mentioned at paragraph 8.3 above was not collected during the course of investigation in the matter, hence, same is not made available to them.

14. Crosseas vide letter dated June 02, 2017 had acknowledge the receipt of SEBI's policy on self-trades and stated that self-trades in question were purely accidental in nature, as a result of ultra-high frequency intended arbitrage trading (simultaneous buying and selling of securities) which was done through approved algo trading software. Further, Crosseas vide said letter dated June 02, 2017 also seeks inspection of additional documents apart from documents mentioned in its letter dated April 24, 2017.

15. On June 09, 2017, Authorized Representatives (ARs) of Crosseas appeared for inspection. ARs inspected the documents and copy of investigation report along with annexures were provided to the ARs.

16. Crosseas vide letter dated June 13, 2017 and June 24, 2017 had stated as under:

16.1. That partial inspection of the documents was granted to them on June 09, 2017. During the inspection, SEBI stated that it does not have remaining documents as mentioned in their letters dated April 24, 2017 and June 02, 2017.

16.2. That they cannot submit their reply in the matter till they were provided with complete sets of documents or SEBI confirms in writing that SEBI does not have the material/documents asked by them.

16.3. SEBI has not granted any documents/material to impute that:

16.3.1. Self-trades executed by Crosseas were incidental/accidental in nature.

16.3.2. Self-trades were manipulative or it was done with intent to defraud.

16.3.3. Self-trades executed by Crosseas were intentional

16.3.4. Self-trades executed by Crosseas has caused any manipulation.

16.4. That investigation report is indicating merely occurrence of self-trades and no intention has been imputed and no dimension of manipulation has been brought out.

16.5. That in view of the Enforcement Action Policy in self-trades matter, SCN can only stand the test of legal scrutiny if SEBI has the followings:

16.5.1. Any material/evidence/documents to indicate that self-trades executed by Crosseas were not incidental/accidental in nature.

16.5.2. Any material/evidence/documents to prove manipulation or intent to defraud self-trades executed by Crosseas.

16.5.3. Any material/evidence/documents to indicate that self-trades executed by Crosseas were intentional.

16.5.4. Any material/evidence/documents to indicate that self-trades executed by Crosseas has caused any manipulation.

16.5.5. Any evidence indicating that the above stated material/evidence/documents (if any) was placed before the Whole Time Member when he decided to issue the above Show Cause Notice against Crosseas.

16.6. That it is settled principle of law that SCN/proceedings is liable to be quashed when there is no material justifying the issuance of SCN.

16.7. That till date, no document/material/evidence has been brought out/specified during the proceedings of inspection to demonstrate that self-trades were manipulative in nature and were not mere occurrence/accidental.

16.8. That in one of the Adjudication order dated June 22, 2017 in respect of Crosseas Capital Services Private Limited in the matter Aster Silicate Limited, the Adjudicating Officer record that *"There is no evidence……. To suggest any fraudulent intention behind execution of self trades by the noticee. Therefore, in compliance of SEBI policy, I am inclined to drop the adjudication proceedings initiated against the Noticee vide SCN dated May6, 2015".*

17. In the interest of natural justice, vide notice of hearing dated August 21, 2017 an opportunity of personal hearing was granted to AKG, Adroit and Crosseas on October 04, 2017. However, due the administrative/official exigency, the hearing in respect of AKG, Adroit and Crosseas scheduled to be held on October 04, 2017 was postponed and same was communicated to AKG, Adroit and Crosseas vide email dated September 14, 2017.

18. Mindspright Legal on behalf of AKG vide letter dated October 09, 2017 submitted the reply in the matter. The submissions/reply in brief are as under:

18.1. AKG denied the allegation of violation of provisions of Sections 12A(a),(b),(c) of SEBI Act read with Regulations 3 (a),(b),(c) and (d), 4 (1), 4 (2) (a) and (g) of PFUTP Regulations, 2003.

18.2. There may be some quite infrequent, random and insignificant instances of self-trade while doing jobbing activities, but those were purely accidental/incidental in the ordinary course of business and not planned to be executed to manipulate trading in the scrip. The random nature of timing, quantity, dealers and partial matching with other market participants substantiates this contention. The orders are placed at the individual Terminal ID level and the orders of small quantities are placed and the average life cycle from the time of placing the order to getting converted into a trade is less than 2 seconds.

18.3. The human involvement is very low for putting the parameters of orders for the day and the trading takes place through the server/CTCL ID and the orders are passed on to the BSE/NSE and the same are matched at the Exchange level. The self-trades happen on account of latency in the leased lines or the satellite link to the Exchanges. The person putting the orders works on closed mechanism where he cannot know the orders which are put by the other traders, whether in the same branch or other.

18.4. These self-trades cannot be treated as fictitious as the same are done on the Exchange approved terminals and in the normal course of business. Balance trades are not self-trades as they are mistakenly matched on other individual terminal ID's which is an

issue that occurs many a times when client is carrying out trading/jobbing/arbitrage transactions.

18.5. A self-trade can fit into the realm of Regulation 4(2)(g) of PFUTP Regulations, only if it involves intention. Intention herein would mean that at the time of entering in transaction i.e. at the time of placing the order a person had deliberately with an intention to match it with the counter order placed the order, however the person at the time of placing the order did not actually wanted to buy/sell the quantity order. The plain reading of the Regulation therefore makes it clear that entering into of a few orders without actual intent of carrying out self-trade would not amount to a trade in contravention of Regulation 4(2)(g) of PFUTP Regulations. A transaction could be termed to be in violation of Regulation 4(2)(g) of PFUTP Regulations, only if the following criteria's are satisfied

18.5.1. A person places an order for buying/selling without the intention of buying/selling of underlying shares. (for e.g.- an order is placed and thereafter cancelled subsequently and the same is done repeatedly)

18.5.2. A person places an order for buying/selling and arranges to place an opposite order for same number of shares at the same price either by himself or by another person acting on his/her instructions repeatedly. (Instance of self/synchronised trades)

18.5.3. In both the above cases, the intention of either not performing the transaction or performing the transaction without the change of beneficial ownership is necessary.

18.6. Not every self-trade is fraudulent or done with the intent to manipulate the market. A dealer can place the buy and sell order for the same stock in one day to get the advantage of intra-day price movement but without knowing that the orders might get matched. It is not possible for traders to prevent self-trade from occurring altogether. Trades are executed in an exchange's order matching systems. Once an order is accepted by the trading system, it is not possible for the trader to have control over who the counter-party is at the time of matching of that trade, as the trading engine finds and matches orders based on price time priority.

18.7. AKG is a jobber/arbitrager who regularly undertakes jobbing transactions of crores of rupees on any given day in multiple scrips. AKG's representatives give instructions based on different strategies to 8 dealers who trade through multiple terminals and therefore there is a high probability that the orders originating from these strategies interact with each other without any malicious intention. Therefore, the allegations of fraud and manipulation resulting from self-trades cannot be levelled unless they are supplemented by strong evidences / documents / information establishing intention to defraud or manipulate the market by means of self-trades, which in the present case are not supplemented.

18.8. SEBI in its new policy observed that intention is a Sine quo non for establishing manipulation in case of self-trades and accidental/unintentional self-trades are not covered under the said regulations. Further it was observed that in all matters of self-trade an assessment has to be made regarding whether the said trade was intentional or unintentional on the basis of supporting evidence and the manipulation caused by indulging in self-trades should be clearly brought out. The quasi-judicial body may assess the ongoing cases involving allegations of self-trade by analyzing whether any manipulation is arising out of self-trade or any intention to enter into is evident from the material on record. If the manipulation or intent can be established the same may be proceeded with as approved, however, if no intention or manipulation is evident from the case and the only charge is mere occurrence of self-trades then the entity may be exonerated by the quasi-judicial authority. Further, while assessing the manipulative intents, the volume transacted may also be considered in addition to the other factors.

18.9. That SEBI itself has taken a stand that intention is a prerequisite for violation of Regulation 3 and 4 of PFUTP Regulations and unintentional self-trades are not violative of Regulations 3 and 4 of PFUTP Regulations. Therefore the burden of proof on AKG to prove its innocence is to just to prove that the trades executed in the scrip of SCTL, resulting into self-trades, were not manipulative and this claim has to be corroborated with other factors such as impact of trades on market volume, nature of the transactions, in-depth analysis of self-trades, and other such factors.

18.10. The self-trades executed by AKG were normal jobbing transactions and there was no intention of AKG to execute trades in the scrip of SCTL without changing the beneficial ownership of shares as alleged.

18.11. The volume of self-trades is less than 1% of the total volume in shares of SCTL and is only 0.17%, thus by no stretch of imagination it can be said that there was any impact of the same in market manipulation.

18.12. The Net LTP contribution by self-trades is 0 and the impact of self-trades on LTP is not significant on daily basis, thus it cannot be alleged that any kind of attempt was made by AKG to artificially increase or decrease the price.

18.13. AKG submits the following reasons to corroborate the claim that the self-trades executed by AKG are accidental and non-intentional:

18.13.1. AKG had its trading account with broker Adroit since 2002.

18.13.2. AKG is engaged in the business of jobbing/arbitrage in the securities market. AKS's arbitrageurs and jobbers regularly visit Adroit's office and undertake jobbing transactions looking into the available opportunities. AKG's jobbers regularly carry out transactions of more than Rs. 100 Crores on any given day in multiple scrips depending on the market conditions and availability of arbitrage conditions. AKG was trading and executing numerous jobbing

transactions on daily basis in more than 100 scrips available for trading on NSE & BSE and SCTL is not the only scrip in which transactions were done by AKG. As these transactions were being executed through multiple dealers, it was practically impossible for any dealer to detect orders of other dealers before entering any order.

18.13.3. SCTL came out with an IPO and the scrip of SCTL was listed on NSE and BSE on April 08, 2011 and opened at around Rs. 78/- on NSE and Rs. 78.35/- on BSE against the issue price of Rs. 69/-. Its intraday high and low were Rs. 84.70/- and Rs.45.40/- on NSE and Rs. 84.65/- and Rs. 45.45/- on BSE and it closed at Rs. 48.05/- on NSE and Rs. 47.60/- on BSE. These figures explains that the scrip was very volatile, which could yield good returns in jobbing. Being a jobber, AKG sought good jobbing opportunities in the market and therefore looking at the high volatility in the scrip of SCTL during the Investigation Period, had traded in the scrip. The days on which self-trades were executed by AKG were the days which witnessed high volatility in the scrip of SCTL.

18.13.4. AKG had appointed 8 number of people as its authorised representatives who were entitled to trade on AKG's behalf in the scrip of SCTL. AKG was allotted multiple terminals with Adroit's dealer to assist the authorised representatives to carry out their jobbing transactions. The representatives of AKG formulated their own strategies and instructed Adroit's dealers to trade in the scrips selected by them in their own permutation and combination. The alleged 103 self-trades executed by AKG were executed through multiple dealers sitting on different terminals. The dealer wise trading details are submitted by AKG.

18.13.5. The trading pattern followed by AKG in the scrip of SCTL was no different from the day to day trading pattern followed by AKG in any other scrip where AKG had traded.

18.13.6. The total value of all trades in SCTL executed by the Noticee during the Investigation Period was Rs. 19.20 Crores i.e. a total of 2.97% of the total market volume on BSE & NSE and out of which only 0.07% of total market volume of trades on BSE & NSE have resulted into the alleged self-trades. The same clearly shows that AKG was placing orders based on their own understanding and without any sinister motive.

18.13.7. Not on any single day of investigation period the alleged self-trades executed by AKG contributed to more than 0.25% of the total market volume of BSE and 0.07% of the total market volume at BSE & NSE.

18.13.8. If AKG would have been actually interested in artificially inflating the volumes of the scrip of SCTL, then in such a case, its contribution to artificial/false trades would have been quite high so that the same could have

an impact on the total traded quantity of SCTL shares and thus could have increased the profit being earned by the Noticee. The fact that no such activity was carried out, clearly shows that that Noticee had no wrong intentions and all the trades were carried out in the normal course of the business.

18.14. Detailed analysis of all self-trades of AKG shows that the same were executed devoid of any manipulative intent. Noticee submit the following facts to substantiate it's claim:

18.14.1. Noticee's total trades executed in the scrip of SCTL at BSE were 28,069 for 32,27,147 shares giving a turnover of more than Rs. 19.20 crores. Inter ID self-trades were 103 for 79,986 shares and same ID self-trades were nil.

18.14.2. The alleged self-trades executed by AKG were unintentional self-trades as none of the self-trades were complete trades. All the alleged trades were partial trades. When the buy order quantity, sell order quantity and the traded quantity in the transaction are same then they are said to be complete trades and if any of the figure is different, then they are called as partial trades. In the instant case, all the 103 trades were partial trades, which means that they were result of split of a single order where a single order given for higher quantity matched with the counter order of low quantity. For e.g. on April 08, 2011 Order No. 16000075031269 of 5000 shares spilt and resulted into 29 trades out of which only 100 shares got matched with a counter order no. 22000088030243 placed for AKG from a different terminal and the balance shares got matched with different entities in the exchange.

18.14.3. There are instances where two orders of higher quantity got matched with each other for lower quantity. For e.g. on April 08, 2011 Order No. 23000093039055 of 90 shares split and resulted into 3 trades and Order No. 14000089053703 of 500 shares split and resulted into 6 trades and both orders matched with each other for merely 2 shares.

18.14.4. 103 self-trades referred hereinbefore were not only the cases arising out of split of one single order but also in some instances 2 or more self-trades have arisen out of 1 single order. For e.g. on April 11, 2011 Order No. 15000077000261 of 3000 shares split and resulted into 21 trades out of which 1000 shares and 187 shares got matched with counter orders of No. 16000073000259 and 12000095000209**,** and the balance shares got matched with different entities in the exchange. The above-mentioned counter orders were also split orders of quantity higher than the matched quantity.

18.14.5. The abovementioned facts clearly shows that the intention of AKG was not to match the trades but to execute trades in normal course of business however incidentally/accidently during the course of execution of trades inadvertently orders got partly matched with counter orders.

18.14.6. There are two types of self-trades (a) Self trade from same terminal (b) self-trade from different terminals. There is a very important distinction between the two, which goes to the root of identifying whether a particular self-trade is intentional or it has happened merely due to co-incidence. A self-trade from the same terminal or same ID self-trade is one in which buy and sell order are both put in from the same computer terminal from the same id, meaning thereby the person who is executing the buy and the sell trade is the same. However, when a self-trade occurs from different terminals or different ID's, although the client account in which the trade is put in is the same but the terminals from which the buy and sell orders are put for the same client are different. The difference clearly suggests a huge possibility of lack of mens rea for executing a self-trade. If the trades are mistaken trade, it can be easily understood if two different individuals are putting in two different orders for the same client, however mistake for cases wherein the buy and sell trades are put in by same individual for same client would be rare.

18.14.7. AKG total number of trades executed in the scrip of SCTL was 28,069 out of which only 103 resulted in self-trades. In these 103 self-trades, there are no same ID self-trades at all and all 103 trades were inter ID self-trades. This clearly shows that the intention was not to match the trades but to genuinely execute the trades in the market. It may also be pointed out that even the alleged self-trades were at prevailing market price and there is no allegation of either increasing or decreasing the price of the scrip.

18.14.8. In the instant case, the manner in which the orders have been put in and resulted into trades, clearly shows that there was no intention on the part of AKG to manipulate the scrip of SCTL. It may also be clarified that in cases of securities law violation the intention of parties is immaterial, however in cases of alleged fraud the intention needs to be deciphered from the actions/circumstances.

18.14.9. Inspite of having different dealers having different terminals at BSE, there are no shares got matched during the Investigation Period on the same terminal, the same clearly shows that AKG's jobbers were always aware of the individual positions and always ensured that AKG trades do not match in any manner, resulting into self-trades. The same shows the high level of expertise and caution exercised by AKG's jobbers in executing the transactions of the company. However, owing to the frequency and speed at which the orders were being placed by the jobbers, no coordination was possible to examine if any other jobber has put in a counter order or that a part of their unexecuted trade, still remains pending and that it would match with their own trade. It can further be seen from the order quantity that each dealer was placing orders independently as the quantities in these trades had huge difference.

18.14.10. It is not known to AKG about any system available with the jobbers/arbitrageurs or in the market to be installed which could rule out any self-trades altogether at the pre-trade level and if there is any such system, AKG would be the first to install the same.

18.14.11. The alleged self-trades of AKG constituted only 0.07% of BSE & NSE total market value in the scrip of SCTL during the Investigation Period.

18.14.12. The percentage of the Inter ID self-trades to the total number of trades executed by AKG in the scrip of SCTL in Adroit's office is meagre 2.47% during the Investigation Period.

18.15. The impact which a self-trade can cause, can be negative only if it involves (a) large volumes, which gives a false representation of liquidity in the scrip or on the market as a whole (b) the trade is done to change the prevailing price of the scrip. In the instant case both of the negatives have not happened, as neither there is huge contribution to market volume, nor there is significant contribution to the LTP by AKG self-trades and therefore no negative inference can be drawn against AKG owing to the alleged few self-trades carried out by AKG.

18.16. AKG has enjoyed no unfair advantage or benefit of any nature owing to the execution of the trades in question, nor has the same resulted in any kind of loss suffered by investors in the scrip of SCTL.

18.17. Further, AKG could not have manipulated the market with such negligible volume and could not have disturbed the market equilibrium because the alleged manipulative trades were miniscule in quantity as compared to the total trading. Considering the volume of the transactions in the scrip and price fluctuation in the exchanges during the period, it is clear that the said alleged self-trades neither lead to price fluctuation nor created a false appearance of trading or were tending to mislead the gullible investors. The said alleged self-trades were bonafide normal trades which got executed in ordinary course and were not designed self-trades and in no manner manipulative.

19. Mindspright Legal on behalf of Adroit vide letter dated October 09, 2017 submitted the reply in the matter. Upon perusal of Adroit reply, it is observed that Adroit in capacity of broker of AKG had submitted similar reply as of AKG's reply dated October 09, 2017. Therefore, for the sake of convenience and repetition, whole reply of Adroit is not reproduced. Additional reply of Adroit which has not been mentioned in AKG reply is mentioned in brief as under:

19.1. Adroit denied the allegation of violation of provisions of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7

of Brokers Regulations, 1992 read with Regulation 9 of Brokers (Second Amendment) Regulations, 2013.

19.2. Adroit is the broker of AKG since 2002.

19.3. The trades executed by AKG were not intentional self-trades and are not violative of SEBI Act or PFUTP Regulations. As the conduct of AKG is not violative of SEBI Act or PFUTP Regulations, therefore, Adroit cannot be held liable for the violation of Broker Regulations for failing to exercise due diligence, as the mischief done by AKR is a pre-requisite for the alleged mischief done by Adroit. Further, nothing has been indicated in the SCN by which it can be inferred that Adroit has not exercised due diligence.

19.4. That Adroit have at all times abided by the code of conduct and have always acted with due skill, care and diligence in the conduct of the business.

20. In the interest of natural justice, vide notice of hearing dated October 25, 2018, an opportunity of personal hearing was granted to AKG, Adroit and Crosseas on November 20, 2018 at SEBI, Head Office, Mumbai.

21. Crosseas vide letter dated November 19, 2018 submitted its reply in the matter. The submissions/reply in brief are as under:

21.1. That SEBI vide letter dated June 8, 2017 and March 08, 2018 addressed to Department of Economic Affairs on the subject of 'self-trades' stated that intention is a sine quo non for establishing manipulation in case of self-trades and that accidental/unintentional self-trades are not covered under SEBI (PFUTP) Regulations and mere occurrence of self-trades is not per se illegal in the absence of any other additional evidence to prove manipulation or intent to defraud.

21.2. SEBI had decided that in order to punish self-trades additional evidence is required, (in addition to occurrence of self-trades in any volume), to prove that the same is intentional and Accidental or unintentional self-trades are not covered under the SEBI (PFUTP) Regulations, 2003, therefore not punishable.

21.3. That in the present matter investigation report indicates merely occurrence of self-trades and no intention has been imputed and no dimension of manipulation has been brought out/imputed. The investigation report corroborates Crosseas submission that the SCN was issued to us merely on the basis of mere occurrence of self-trades.

21.4. That self-trades were purely unintentional / accidental. The volume of such unintentional/ accidental self-trades executed by Crosseas was only 1.81% of total market volume of SCTL at BSE, 0.92% of total market volume of SCTL at NSE and

1.29 % of total combined market volume of SCTL at both the exchanges, i.e. BSE and NSE.

21.5. That the percentage of self-trade by Crosseas in the scrip of SCTL is miniscule and the Show Cause Notice/ Investigation Report does not allege or cite any additional evidence to prove that self-trade were intentional. Crosseas could not have manipulated the market with such negligible volume and could not have disturbed the market equilibrium because the self-trades were miniscule in quantity as compared to the total trading volume in the markets. Further, SCTL was highly liquid during the investigation period both volume and value wise.

21.6. That Self-Trade volume of 1.29% to market volume would be like a drop in the ocean of liquidity in SCTL and no one would intentionally attempt it. SEBI vide order no. WTM/MPB/EFD-1-DRA-3/102/2017 dated November 30, 2017 in respect of AKG in the matter of Rushil Décor Limited had disposed the SCN in favor of AKG while observing that *"Self-trades executed by the noticee in the scrip of RDL was at the time of listing when liquidity in the scrip was high"*.

21.7. In view of above observation, it is submitted that Crosseas self-trade volume was miniscule, had no effect on the liquidity of SCTL which was highly liquid, and that it was purely unintentional.

21.8. That Crosseas had deployed multiple CTCL servers (14), each of which had a CTCL id (Dealer Name is w.r.t. CTCL ID and not Trader ID), and each CTCL server was logged into by 4/5 traders (50), represented by a combination of unique terminal/location id (50).

21.9. Analysis of the self-trade data mapped to terminal / location id (excel sheet terminal ID analysis is attached in CD) reveals that almost all the self-trades were spread over a large number of individual trader ids (combination of unique terminal/location id) with different trader ids being the counter parties. Self-trades matching within the same trader id is a negligible % of the total number of self-trades that occurred which is less than 0.05% of the market volume.

21.10. Analysis of the Self-trade data mapped to Order Quantity, Order Price, and Trade Quantity (Excel sheet Order/Trade analysis is attached in CD) reveals the following:

21.10.1. Self-Matched trades are random in nature for quantity/price points and spread throughout the day.

21.10.2. Self-Matched quantities are extremely small as compared to order size, and unequal.

21.10.3. If at all, only a miniscule proportion of any given order has converted into self-trades on account of system generated orders by the Approved Algo Trading Software because of the order pattern of other market participants. Besides, system generated orders have rarely and accidentally matched

internally, and in miniscule odd quantities as compared to ORIGINAL and modified order size. Orders, whether resulting in rare internal matching or not, have been placed at or around the market price. There is no allegation of price manipulation/LTP contribution/NHP contribution.

21.10.4. Orders on buy / sell legs are of different sizes in almost all cases.

21.10.5. Price limits on buy/sell legs are also different in almost all cases.

Thus, it can be seen that there is no structure to the self-trades in terms of order quantity, price, or actual matched quantity. Moreover, there is no charge of synchronized trades. All our self-trades were purely co-incidental to high speed trading and purely unintentional

21.11. On the basis of the order log given under inspection, we would like to submit that;

21.11.1. Order which resulted into partial and miniscule self-trades were part of much larger "ORIGINAL" orders generated by our approved Algo software.

21.11.2. This original order gets modified into a smaller quantity based on progressive matching, which would depend on the conversion of the original order into trade. (based on market movement) This modified order is itself a miniscule percentage of the original order and further a miniscule percentage of this modified order might have accidently and rarely resulted into self-trades. The remaining part of the original and modified order gets matched with orders of other market participants or gets expired.

21.11.3. Further, given the odd/random quantities of orders that partially resulted in self-trades, it can be concluded that such orders themselves were not "ORIGINAL" orders generated by the Algo, but "MODIFIED" orders for both quantity (based on unfilled quantities) as well as price (based on market movement). Intentional self-trading on the other hand will attempt to match "ORIGINAL" orders on both buy/sell legs, which shall also be of same quantity as well as price.

21.12. That the self-trades were purely unintentional and co incidental can be borne out by the facts as below:

21.12.1. All the trades have been executed on the approved Algo Trading Software in an automated manner and there is no manual punching of trades.

21.12.2. Internally matched trades (self-trades) are spread over a large number of individual trader ids (multiple servers / lease lines). Actual self-trades within the same user id is much less than as alleged in the show cause notice.

21.12.3. Self-Matched trades are random in nature and spread throughout the day.

21.12.4. Self-Matched quantities are extremely small as compared to order size, random and unequal.

21.12.5. If at all, only a miniscule proportion of any given order has converted into self-trades on account of system generated trading mechanism by using Approved Algo Trading Software because of the order pattern of other market participants. Besides, system generated orders have only been rarely and accidentally matched internally, and in odd quantities. Orders, whether resulting in rare internal matching or not, have been placed at or around the market price. Intentional trades, on the other hand attempt to match entire order quantities on both sides and in large order sizes.

21.12.6. The internal matching has also happened on account of the latency factor in the system of Algo Trading in which system places orders at ULTRA HIGH FREQUENCY and there is at time latency on account of lease line distance, drop of packets in the leased lines, due to which some of the trades may have rarely and accidentally matched internally as the buy/sell orders are placed at Ultra High Frequency and automatically.

21.12.7. Orders were never placed with the intent to do a self-trade.

21.12.8. The current scrip was highly liquid during investigation period. It is well understood that synchronized and intentional self-trades are conducted in illiquid items to display a false sense of liquidity. There is no purpose of attempting to inject liquidity in already highly liquid scrip.

21.12.9. There is no charge relating to price manipulation, exit or entry provider, etc of any other kind against us other than mere occurrence of self-trades.

21.13. That Crosseas had placed reliance on various adjudication order passed by SEBI. In the said order, adjudicating officer record that "There is no evidence…… to suggest any fraudulent intention behind execution of self-trades by the Noticee. The volume of self-trade is less than 1% of the total volume in the shares of scrip. Therefore, in compliance of SEBI policy, I am inclined to drop the adjudication proceedings initiated against the Noticee vide SCN".

21.14. The Adjudicating officer of SEBI in respect of Crosseas in the matter of trading activities in the scrip of Multi Commodity Exchange of India Limited, Apollo Tyres Limited, United Spirits Limited, disposed off the SCNs in the favor of Crosseas by stating that *"incidental self-trades or the mere execution of self-trades, are not per - se manipulative/fraudulent"*. In these cases, Crosseas have used the same Algo strategy as was used in the present case.

21.15. Crosseas submitted the list of number of SEBI adjudication order on the issue of self-trades, where adjudicating officer of SEBI had dropped the SCN/adjudication proceedings on the abovementioned ground.

21.16. On a daily basis, before during and after the said time period, Crosseas traded in the many scrips apart from SCTL with the same ALGO displaying the same trading pattern. In this regard, details are as under:

SL. No.	Date	NSE Pro Scrip Count	BSE Pro Scrip Count
1	April 08, 2011	302	303
2	April 11, 2011	279	278
3	April 13, 2011	324	323

21.17. Attention is also drawn to order dated April 20, 2016 of Hon'ble SAT in the matter of Krishna Enterprises v SEBI, wherein it was held that *"passing conflicting orders would not promote the development of securities market and would not be in the interest of the securities market."*

21.18. It is to be noted that SEBI's own committee (SMAC) had noted in its meeting held on January 30, 2014 that *"It was felt that self-trades could be possible in the scenario wherein multiple traders in a broking house may be placing buy and sell orders in same scrip for different clients or multiple ALGO orders of the same broker get matched, without any intent of self-execution, creation of artificial volume, manipulation etc."*

21.19. It is submitted that expert opinion corroborates the submissions that in present case HFT/ALGO trading led to unintended self-trades.

21.20. In respect of Para 9 of the Show Cause Notice, Crosseas submit that if the charge of PFUTP violations in respect of Crosseas's own proprietary trades is dropped, the charge of failure of due diligence as a broker will also have to be dropped as Crosseas cannot be accused of not carrying out due diligence about something which is not wrong / illegal. In this regard, Crosseas rely on the judgment of the Hon'ble Supreme Court in the matter of *Rakhi Trading* (Civil Appeal No. 1969 of 2011 dated February 08, 2018 Page no.53 para 44) which clearly states that brokers cannot be held accountable in such matters.

21.21. It is not possible for traders to prevent self-trade from occurring. Trades are executed in an exchange's order matching system. Once an order is accepted by trading system, it is not possible for trader to have control over who the counter-party is at the time of matching of that trade, as the trading engine finds and matches orders based on price time priority. Crosseas have made several representations to NSE on

this issue, clearly demonstrating that monitoring of Self Trades and prevention thereof only could have been done at the level of exchanges. (Copy of one such letter dated January 08, 2015 is enclosed). Therefore, SEBI itself had directed the stock exchanges to come out with a mechanism to curb the self-trades. Accordingly, the stock exchanges have come out with their Self Trade Prevention Mechanism in 2015.

21.22. The sophisticated surveillance systems of SEBI and of the Exchanges never detected any abnormality or problem with Self Trades including our Self Trades. If the monitoring by exchanges and SEBI who have invested heavily in these systems and have deployed huge surveillance teams did not find anything abnormal in the course of their monitoring in the matters of Self Trades obviously brokers cannot be accused of failure in the same matters.

22. Mr. Anand Narayan, Advocate and Mr. Rajesh Baheti, Director, Crosseas, Authorized Representatives ("ARs") appeared on behalf of Crosseas on November 20, 2018 and made oral submissions, which are as under:

"……

22.1. *ARs stated that detailed reply dated November 19, 2018 in the matter was already submitted to SEBI. ARs also submit the copy of same before Hon'ble Whole Time Member.*

22.2. *ARs reiterate the submissions dated June 24, 2017 and November 19, 2018 made by Crosseas.*

22.3. *ARs stated that the facts of present case is similar to the facts of case in respect of AKG Securities and Consultancy Private Limited (AKG) in the matter of Rushil Décor Limited. SEBI vide order dated November 30, 2017 in respect of AKG in the matter of Rushil Décor Limited had given benefit of doubt to AKG in respect of an alleged violation of provisions of regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of the PFUTP Regulations and disposed of the matter.*

22.4. *ARs denied the allegation of violation of provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 and Clauses A(3), (4) and (5) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with Regulation 9 of SEBI (Stock Brokers and Sub Brokers) Regulations, 2013.*

22.5. *ARs stated that all self-trades in the scrips of Shilpi were due to approved high speed algo-trading software. The algo-trading was approved by NSE. The same algo were utilize by multiple dealers.*

22.6. *ARs stated that these self-trades executed by Crosseas were purely unintentional and accidental in nature and in the ordinary course of business and not planned to be executed to manipulate trading in the scrip. The volume of such unintentional and accidental self-trades executed by Crosseas was only 1.29% of total combined market volume of Shilpi at both NSE and BSE.*

22.7. *In show cause notice, there is no allegation of LTP, price manipulation, synchronized trading, circular trading and reversal trades.*

22.8. *In year 2011, there was no mechanism to prevent self-trades at exchange level or at broker level. In the year 2015, we have written number of letters to NSE seeking guidance on self-trade prevention mechanism. In the year 2015, mechanism was enabled at exchange level to prevent self-trades.*

ARs are advised to submit the NSE approval with respect to Algorithms Trading. ARs are also advised to submit the letters written by Crosseas to NSE seeking guidance on self-trade prevention mechanism.

ARs granted time till November 22, 2018 to submit aforesaid information/documents. If ARs fails to submit the same within the said time limit, then the matter would be proceeded further on the basis of documents available on record……"

23. Ms. Rishika Harish, Advocate, Ms. Rakshita Poddar, Advocate and Mr. Ralph Rodrigues, Authorized Representatives (hereinafter referred to as **'ARs'**) appeared on behalf of AKG and Adroit for hearing on November 20, 2018 and made oral submissions, which are as under:

"……

AKG:

23.1. *ARs reiterate the submission dated October 09, 2017 made by AKG.*

23.2. *ARs stated that the facts of present case is similar to the facts of case in respect of AKG in the matter of Rushil Décor Limited. SEBI vide order dated November 30, 2017 in respect of AKG in the matter of Rushil Décor Limited had given benefit of doubt to AKG in respect of an alleged violation of provisions of regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of the PFUTP Regulations and disposed of the matter.*

23.3. *ARs denied the allegation of violation of provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003.*

23.4. *ARs stated that AKG is in the business of jobbing activities and there may be some quite infrequent, random and insignificant instances of self-trade while doing*

jobbing activities, but those were purely accidental/incidental in the ordinary course of business and not planned to be executed to manipulate trading in the scrip. AKG was trading and executing jobbing transaction in more than 100 scrips on daily basis.

23.5. *In the scrip of Shilpi, no self-trade by AKG were observed on NSE and self-trades by AKG were observed only on BSE which are merely incidental and accidental in nature.*

23.6. *Self-trade are only inter id self-trades and not even a single self-trade are from same id.*

23.7. *There was no matched trades i.e. all self-trades are split trades or partial trades.*

23.8. *In show cause notice, there is no allegation of LTP, price manipulation, synchronized trading, circular trading and reversal trades.*

23.9. *In year 2011, there was no mechanism to prevent self-trades at exchange level or at broker level. In the year 2015, mechanism was enabled at exchange level to prevent self-trades.*

Adroit:

23.10. *ARs reiterate the submission dated October 09, 2017 made by Adroit.*

23.11. *ARs denied the allegation of violation of provisions of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with Regulation 9 of SEBI (Stock Brokers and Sub Brokers) Regulations, 2013.*

23.12. *ARs stated that if the self-trades are not a manipulation trades by client - AKG than Adroit-broker is not liable for any manipulation.*

23.13. *Adroit is acting on the instruction of client-AKG. Adroit has done its due diligence, this can be inferred from the fact that Self-trade by AKG are only inter id self-trades and not even a single self-trade are from same id and there was no matched trades i.e. all self-trades are split trades or partial trades.*

23.14. *ARs stated that client-AKG is in the business of jobbing activities and there may be some quite infrequent, random and insignificant instances of self-trade while doing jobbing activities, but those were purely accidental/incidental in the ordinary course of business and not planned to be executed to manipulate trading in the scrip. Client-AKG was trading and executing jobbing transaction in more than 100 scrips on daily basis.*

23.15. *In year 2011, there was no mechanism to prevent self-trades at exchange level or at broker level. In the year 2015, mechanism was enabled at exchange level to prevent self-trades.*

23.16. *In show cause notice, there is no allegation of LTP, price manipulation, synchronized trading, circular trading and reversal trades.*

ARs are advised to submit the list of 100 scrips in which AKG was trading on daily basis. ARs are also advised to submit their hypothesis as to why self-trades by AKG were not observed/happened at NSE and only observed/happened at BSE.

ARs granted time till December 04, 2018 to submit aforesaid information. If ARs fails to submit the same within the said time limit, then the matter would be proceeded further on the basis of documents available on record……"

24. Crosseas vide letter dated November 21, 2018 submitted the following documents:
    24.1. NSE approval/permission dated February 16, 2010 for Algorithms Trading facility in the capital market segment and futures and options segment of the exchange for CTCL facility using CTCL software developed in-house with version no. is 1.0. The name of the strategy is Ultra High Frequency Directional Trading (UHFT).
    24.2. Crosseas letters dated January 08, 2015, March 01, 2015, March 20, 2015, April 15, 2015, June 25, 2015, and September 03, 2015 addressed to NSE seeking guidance on self-trade prevention mechanism.

25. During the course of hearing AKG and Adroit were advised to submit the list of 100 scrips in which AKG was trading on daily basis and their hypothesis as to why self-trades by AKG were not observed/happened at NSE and only observed/happened at BSE. ARs of AKG and Adroit vide letter dated December 03, 2018 submitted the list of names of 350 scrips in which AKG had traded during the investigation period. However, it is noted the AKG and Adroit had failed to submit their hypothesis as to why self-trades by AKG were not observed/happened at NSE and only observed/happened at BSE.

FINDINGS

26. I have perused the SCN, reply and other materials on the record. On perusal of the same, the following issues arise for consideration. Each issue is dealt with separately under different headings.

(i) *Whether the AKG and Crosseas had entered into self-trades as alleged in the SCN?*

(ii) *If issue no. 1 is determined in affirmative, then whether such self-trades executed by AKG and Crosseas have been entered into intentionally / with manipulative intent?*

(iii) *If issue no.2 is found in affirmative, then whether AKG and Crosseas have violated the provisions of Sections 12A(a),(b),(c) of SEBI Act read with Regulations 3 (a),(b),(c) and (d), 4 (1), 4 (2) (a) and (g) of PFUTP Regulations, 2003?*

(iv) *If issue no.1, 2 & 3 is found in affirmative, then whether Adroit acting as broker and counterparty broker for self-trades in trading account of AKG has violated the provisions of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Brokers Regulations, 1992 read with Regulation 9 of Brokers (Second Amendment) Regulations, 2013?*

(v) *If issue no.1, 2 & 3 is found in affirmative, then whether Crosseas by acting as broker and counterparty broker for self-trades in its own account on NSE and BSE, has violated the provisions of Clauses A (3), (4) & (5) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Brokers Regulations, 1992 read with Regulation 9 of Brokers (Second Amendment) Regulations, 2013?*

27. Before moving forward, it will be appropriate to refer to the relevant provisions of SEBI Act, 1992, PFUTP Regulations, 2003, Brokers Regulations, 1992 and Brokers (Second Amendment) Regulations, 2013 which read as under:

SEBI Act, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control:

Section 12A: *No person shall directly or indirectly:-*

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a

recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations, 2003

Regulation 3: - Prohibition of certain dealings in securities

3. *No person shall directly or indirectly—*

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

Regulation 4:-Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities..

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) ……..;

(c) ……..;

(d) ……..;

(e) ……..;

(f) ……..;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

Brokers Regulations, 1992

Stock brokers to abide by Code of Conduct.

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

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 7]

A. General.

(1) ……

*(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.*

*(3) **Manipulation:** A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.*

*(4) **Malpractices:** A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.*

*(5) **Compliance with statutory requirements**: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.*

Brokers (Second Amendment) Regulations, 2013

***Regulation 9:** Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely:*

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

<u>ISSUE No. 1</u>- Whether AKG and Crosseas had entered into self-trades as alleged in the SCN?

28. I note that Self-trades are trades executed on the stock market in which both the buyer and the seller are the same entity. Self-trades do not represent a real change in beneficial ownership of the security.

29. In the SCN, it is alleged that, during the investigation period, at BSE and NSE, Crosseas Trading in its proprietary account had executed self-trades in the scrip of SCTL and at BSE, AKG trading through Adroit had executed self-trades in the scrip of SCTL, the details of the alleged self-trades are as under:

At BSE

Entity Name	Broker On Both Buy & Sell Side	Total Self Trade Volume	Total Self Trade Count	No of days on which self trades done	% Of Self Traded Qty. To Market Vol.	Net LTP contribution by self trades
Crosseas	Crosseas	8,37,320	10,528	3	1.81	-15.45
AKG	Adroit	79,986	103	3	0.17	0

At NSE

Entity Name	Broker On Both Buy & Sell Side	Total Self Trade Volume	Total Self Trade Count	No of days on which self trades done	% Of Self Traded Qty. To Market Vol.	Net LTP contribution by self trades
Crosseas	Crosseas	5,85,039	7,276	3	0.92	-13.85

30. From perusal of the above, following is observed:

30.1. At BSE that on 3 days AKG had entered into 103 self-trades for 79,986 shares of SCTL i.e. 0.17% of total volume traded on market.

30.2. At BSE that on 3 days Crosseas had entered into 10,528 self-trades for 8,37,320 shares of SCTL i.e. 1.81% of total volume traded on market.

30.3. At NSE that on 3 days Crosseas had entered into 7,276 self-trades for 5,85,039 shares of SCTL i.e. 0.92% of total volume traded on market.

31. Form the submissions of AKG and Crosseas, following is noted:

31.1. AKG has not disputed the fact that, at BSE, it had executed 103 self-trades for 79,986 shares of SCTL. However, AKG had contended that the said self-trades were purely accidental/incidental in the ordinary course of business and not planned to be executed to manipulate trading in the scrip.

31.2. Crosseas has not disputed the fact that, at BSE, it had executed 10,528 self-trades for 8,37,320 shares of SCTL and at NSE, it had executed 7,276 self-trades for 5,85,039 shares of SCTL. However, Crosseas had contended that self-trades were

purely unintentional / accidental, the percentage of self-trade by Crosseas in the scrip of SCTL is miniscule and had no effect on the liquidity of SCTL which was highly liquid.

32. I therefore find that AKG and Crosseas had executed self-trades in the scrip of SCTL.

<u>ISSUE No. 2</u> - If issue no. 1 is determined in affirmative, then whether such self-trades executed by AKG and Crosseas have been entered into intentionally / with manipulative intent?

33. Vide order dated July 14, 2006, Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**) in the matter of Ketan Parekh v. SEBI, stated that *"…….Any transaction executed with the intention to defeat the market mechanism negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available……"*

34. Regulation 4(2) (g) of PFUTP Regulations, provides that dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security. Since self-trades does not result in beneficial ownership, the same comes within the sweep of Regulation 4(2) (g) of PFUTP Regulations. However, mere occurrence of self-trades cannot be considered as per se illegal in the absence of any other additional evidence to prove manipulation or intent to defraud as is done in cases of synchronized trades. Therefore, in all matters of self-trade, an assessment has to be made regarding whether the said trade was intentional or unintentional on the basis of supporting evidence, and the manipulation caused by indulging in self-trades should be clearly brought out. It is relevant to note that SEBI has already laid down in its policy on self-trade dated May 16, 2017 (hereinafter referred to as **"Policy"**) that intention is a *sine qua non* for establishing manipulation in case of self-

trades, and that accidental/unintentional self-trades are not covered under the PFUTP Regulations.

35. In order to determine the intention of AKG and Crosseas regarding execution of self-trades, following is observed from the documents available on record:

35.1. ***AKG Trading details and its submissions:***

35.1.1. At **BSE**, during the investigation period, **AKG** had bought 32,27,147 shares of SCTL (6.97 % of total market traded volume) and sold 32,27,147 shares of SCTL (6.97 % of total market traded volume). On 3 days, out of 27,966 AKG trades, **AKG** had entered into 103 self-trades for 79,986 shares of SCTL i.e. 0.17% of total market volume. The Net LTP Contribution by self-trades was Rs. 0.

35.1.2. From the trade and order log as well as from the **submission of AKG**, I note the following that:

35.1.2.1. During the investigation period, at **BSE**, total trades executed by AKG were 27,966 trades for 32,27,147 shares. Out of 27,996 trades executed by AKG, 103 trades for 79,986 shares were self-trades. Further, out of 103 self-trades, all 103 self-trades for 79,986 shares were executed through different terminal ID's and nil self-trades were executed through the same terminal ID.

35.1.2.2. All 103 self-trades were partial trades i.e. they were result of split of a single order where a single order given for higher quantity matched with the counter order of low quantity. For example on April 08, 2011 Order No. 16000075031269 of 5000 shares split and resulted into 29 trades out of which only 100 shares got matched with a counter order no. 22000088030243, and the balance shares got matched with different entities in the exchange.

35.1.2.3. In some instances 2 or more self-trades have arisen out of 1 single order. For example on April 11, 2011 Order No. 15000077000261 of 3000

shares split and resulted into 21 trades out of which 1000 shares and 187 shares got matched with counter orders of No. 16000073000259 and 12000095000209, and the balance shares got matched with different entities in the exchange.

35.1.2.4. That AKG was carrying out jobbing transactions on a daily basis in more than 100 scrips on NSE and BSE. Self-trades in the scrip of SCTL occurred while doing jobbing activities and were purely accidental / incidental in the ordinary course of business.

35.1.2.5. That AKG had appointed 8 number of people as its authorized representatives to trade on its behalf in the scrip of SCTL. AKG was allotted multiple terminals with Adroit's dealer. These authorized representative formulated their own strategies and instructed the Adroit's dealers to trade in the selected scrips in their own permutation and combination. These 8 authorized representatives were placing orders with multiple dealers on different terminals at Adroit's office based on their understanding. The alleged 103 self-trades were executed by AKG through multiple dealers.

35.1.2.6. That the day to day trading pattern of AKG in the scrip of SCTL was same as of other scrips.

35.1.2.7. That self-trades executed by AKG were unintentional self-trades. None of the 103 self-trades executed by AKG were the complete trade i.e. the ordered quantity and the traded quantity matched completely. All 103 self-trades were partial trades which means that they were result of split of a single order where a single order given for higher quantity matched with the counter order of low quantity.

35.2. ***Crosseas Trading details and its submissions:***

35.2.1. At **BSE**, during the investigation period, **Crosseas** had bought 65,40,333 shares of SCTL (14.12 % of total market traded volume) and sold 65,29,667 shares of

SCTL (14.10 % of total market traded volume). On 3 days, out of 1,05,902 Crosseas trades, **Crosseas** had entered into 10,528 self-trades for 8,37,320 shares of SCTL i.e. 1.81% of total market volume. The Net LTP Contribution by self-trades was Rs. -15.45.

35.2.2. At **NSE**, during the investigation period, **Crosseas** had bought 66,02,747 shares of SCTL (10.35% of total market traded volume) and sold 66,13,226 shares of SCTL (10.37 % of total market traded volume). On 3 days, out of 1,11,693 Crosseas trades, **Crosseas** had entered into 7,276 self-trades for 5,85,039 shares of SCTL i.e. 0.92% of total market volume. The Net LTP Contribution by self-trades was Rs. -13.85.

35.2.3. From the trade and order log as well as from the **submission of Crosseas**, I note the following that:

35.2.3.1. At **BSE,** during the investigation period, total trades executed by Crosseas were 1,05,902 trades. Out of 1,05,902 trades executed by Crosseas, 10,528 trades for 8,37,320 shares were self-trades. I note that Crosseas had deployed multiple CTCL servers (14), each of which had a CTCL id (Dealer Name is w.r.t. CTCL ID and not Trader ID), and each CTCL server was logged into by 4/5 traders (50), represented by a combination of unique terminal/location id (50). In this context the number of self-trades and no. of self-traded shares should be analyzed based on the combination of unique terminal ID and Location ID. In the instant case I note that 7 self-trade comprising of 631 shares were executed from same Terminal ID as well as Location ID. Further, 10,521 self-trades comprising of 8,36,689 shares were executed either from different Terminal ID or from same Terminal ID but different Location ID.

35.2.3.2. Most of the self-trades were partial trades i.e. they were result of split of a single/original order where a single order given for higher quantity matched with the counter order of low quantity. For example on April 08, 2011 Order No. 14000082004260 of 1,000 shares split and resulted into 5 trades out of which only 200 shares got matched with a counter

order no. 12000097004055, and the balance shares got matched with different entities in the exchange.

35.2.3.3. Also in many instances, 2 or more self-trades have arisen out of 1 single order. For example on April 08, 2011 Order No. 12000094000010 of 2,000 shares split and resulted into 10 trades out of which 200 shares, 77 shares and 51 shares got matched with counter orders of No. 19000086006239, 12000097009260 and 14000082010112 respectively and the balance shares got matched with different entities in the exchange.

35.2.3.4. At **NSE,** during the investigation period, total trades executed by Crosseas were 1,11,693 trades. Out of 1,11,693 trades executed by Crosseas, 7,276 trades for 5,85,039 shares were self-trades. I note that Crosseas had deployed multiple CTCL servers (14), each of which had a CTCL id (Dealer Name is w.r.t. CTCL ID and not Trader ID), and each CTCL server was logged into by 4/5 traders (50), represented by a combination of unique terminal/location id (50). In this context the number of self-trades and no. of self-traded shares should be analyzed based on the combination of unique terminal ID and Location ID. In the instant case I note that 378 self-trade comprising of 30,178 shares were executed from same Terminal ID as well as Location ID. Further, 6,878 self-trades comprising of 5,46,861 shares were executed either from different Terminal ID or from same Terminal ID but different Location ID..

35.2.3.5. Most of the self-trades were partial trades i.e. they were result of split of a single/original order where a single order given for higher quantity matched with the counter order of low quantity. For example on April 08, 2011 Order No. 2011040876647916 of 1,000 shares split and resulted into 7 trades out of which only 167 shares got matched with a counter order no. 2011040876115198 and the balance shares got matched with different entities in the exchange.

35.2.3.6. Also in many instances, 2 or more self-trades have arisen out of 1 single order. For example on April 08, 2011 Order No. 2011040877482660 of 5,000 shares split and resulted into 9 trades out of which 168 shares and 75 shares got matched with counter orders of No. 2011040877489756 and 2011040877489780 and the balance shares got matched with different entities in the exchange.

35.2.3.7. That on a daily basis, during the investigation period, Crosseas had traded in approximately 300 scrips on NSE and BSE with same ALGO.

35.2.3.8. That no document/material/evidence has been brought out/specified by SEBI during the proceedings of inspection to demonstrate that self-trades by Crosseas were manipulative in nature and were not mere occurrence/accidental. Investigation report indicates merely occurrence of self-trades and no intention has been imputed and no dimension of manipulation has been brought out/imputed.

35.2.3.9. That self-trades by Crosseas were purely unintentional / accidental. The volume of such unintentional/ accidental self-trades executed by Crosseas was only 1.81% of total market volume of SCTL at BSE, 0.92% of total market volume of SCTL at NSE and 1.29 % of total combined market volume of SCTL at both the exchanges, i.e. BSE and NSE.

35.2.3.10. That all trades of Crosseas have been executed on the approved Algo Trading Software in an automated manner and there is no manual punching of trades. Only a miniscule proportion of any given order has converted into self-trades on account of system generated trading mechanism by using Approved Algo Trading Software because of the order pattern of other market participants.

35.2.3.11. Regarding the allegation of execution of Self-Trades, Crosseas had placed reliance on various SEBI orders where the proceedings against entities have been dropped.

35.3. The period of investigation was from April 08, 2011 to April 13, 2011. The scrip of SCTL got listed on BSE and NSE on April 08, 2011. I note that the trading volume

during the investigation period was very high as compared to the trading volume after the investigation period. This was due to the high listing day volume of 3,84,98,254 shares (BSE) and 5,18,20,648 shares (NSE) on April 08, 2011. On the listing day, the scrip price opened at Rs. 78.35 (BSE) and Rs. 78 (NSE) and closed at Rs. 44.85 (BSE) and Rs. 44.80 (NSE) at the end of investigation period. At BSE, the average traded volume per day during the investigation period was 1,54,35,186 shares and post investigation period was 1,64,703 shares. At NSE, the average traded volume during the investigation period was 2,12,56,422 shares and post investigation period was 2,65,335 shares. Thus, I find that self-trades executed by AKG and Crosseas in the scrip of SCTL was at the time of listing when liquidity in the scrip was high.

35.4. I also note that no adverse observations regarding synchronized trading, reversal trading, LTP contribution or creation of New High Price etc. has been brought out in the investigation report against AKG and Crosseas. In addition to same, no fraudulent pattern / modus operandi was noted against AKG and Crosseas in the investigation report regarding such self-trades.

36. Considering the order placing pattern and other circumstances mentioned at paragraph 35 above all seen together, it would be difficult to conclude that the impugned self-trades by AKG and Crosseas are done intentionally. The circumstantial evidences above described do not rule out the possibility that the trades are accidental. In view of the absence of countervailing circumstances to indicate that the trades were motivated by intention, the preponderance of probability is that these trades are accidental self-trades. Therefore, I am constrained to hold that these trades are accidental self-trades. However, I hasten to add that in a scenario where the accidental self-trades are huge in number and has considerable impact on the price and volume of the scrip which is subjected to self-trades, the price and volume impact may indicate that the trades were so designed to appear accidental but were in fact motivated by the manipulative intention of creation of false volume or false price ascension or descension. Also, I observe that in the instant case, there is no allegation of price manipulation by AKG and Crosseas. In view of this, I

observe this case merits extension of benefit of doubt to AKG and Crosseas in respect of the allegation raised in the SCN.

ISSUE No. 3- If issue no.2 is found in affirmative, then whether AKG and Crosseas have violated the provisions of Sections 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations?

37. In view of the findings mentioned at paragraphs 35 & 36 above, I am of the considered view that AKG and Crosseas are entitled to the benefit of doubt in respect of alleged violations of provisions of Sections 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of the PFUTP Regulations.

ISSUE No. 4- If issue no.1, 2 & 3 is found in affirmative, then whether Adroit acting as broker and counterparty broker for self-trades in trading account of AKG have violated the provisions of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Brokers Regulations, 1992 read with Regulation 9 of Brokers (Second Amendment) Regulations, 2013?

38. It is alleged in the SCN that Adroit had failed to exercise due skill, care and diligence while acting as a broker and counter party broker for self-trades in trading account of AKG. In this regard, from paragraphs 35, 36 and 37 above, I note that the impugned self-trades by AKG are accidental and unintentional self-trades and have been entered without manipulative intention of creation of false volume or false price ascension or descension. Therefore, there is no case to draw any adverse inference against Adroit with regard to its role as broker that it had failed to abide by the code of conduct. Thus, I am of the considered view that Adorit is entitled to the benefit of doubt in respect of an alleged violation of provisions of Clause A(2) of the Code of Conduct for Stock Brokers as

specified under Schedule II read with Regulation 7 of Brokers Regulations, 1992 read with Regulation 9 of Brokers (Second Amendment) Regulations, 2013.

ISSUE No. 5 - If issue no.1, 2 & 3 is found in affirmative, then whether Crosseas by acting as broker and counterparty broker for self-trades in its own account on NSE and BSE, have violated the provisions of Clauses A (3), (4) & (5) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Brokers Regulations, 1992 read with Regulation 9 of Brokers (Second Amendment) Regulations, 2013?

39. It is alleged in the SCN that Crosseas by acting as broker and counter party broker for self-trades in its own account had violated the provisions of Clauses A (3), (4) & (5) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Brokers Regulations, 1992 read with Regulation 9 of Brokers (Second Amendment) Regulations, 2013. In this regard, from paragraphs 35, 36 and 37 above, I note that the impugned self-trades by Crosseas are accidental and unintentional self-trades and have been entered without manipulative intention of creation of false volume or false price ascension or descension. Therefore, there is no case to draw any adverse inference against Crosseas with regard to its role as broker that it had failed to abide by the code of conduct. Thus, I am of the considered view that Crosseas is entitled to the benefit of doubt in respect of an alleged violation of provisions of Clauses A (3), (4) & (5) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Brokers Regulations, 1992 read with Regulation 9 of Brokers (Second Amendment) Regulations, 2013.

ORDER

40. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992, hereby dispose of the show cause notice dated April 05, 2017 issued to AKG Securities and Consultancy Private Limited, Crosseas Capital Services Private Limited and Adroit Financial Services Private Limited without any directions.

41. The order shall come into force with immediate effect.

42. A copy of this order shall be forward AKG, Adroit, Crosseas and all recognized stock exchanges.

-Sd-

DATE: APRIL 26, 2019 **MADHABI PURI BUCH**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA