

MCX STOCK EXCHANGE LTD.
DISCIPLINARY ACTION COMMITTEE
ORDER UNDER RULES 1 & 2 OF THE RULES OF MCX STOCK EXCHANGE LIMITED

1. BACKGROUND

- 1.1. Marigold Vanijya Pvt. Ltd. (**MVPL** or the "**Member**") (Member ID 65800) is a Trading Member on the Currency Derivatives (CD) segment of MCX Stock Exchange Ltd. ("**the Exchange**") and is registered with Securities and Exchange Board of India (**SEBI**) as a trading member on CD segment of the Exchange with registration No. INE261336536 dated April 2, 2009.
- 1.2. A regular inspection of MVPL covering the period July 1, 2010 to December 31, 2011, was conducted by the Exchange in February / March 2012.

2. Inspection Finding – Business of dealings in unlisted securities & Depositing client money in 'own' bank account

- 2.1. During inspection, while verifying member's 'own' bank accounts, it was observed that the member had deposited money amounting to Rs. 1.67 crore received from clients in his own account and paid money amounting to Rs. 2.39 crore to clients from his 'own' bank accounts.
- 2.2. Details relating to own bank entries verified and instances of non-segregation observed are placed as below:

Year	HDFC BANK OWN A/c – 00080340031331				INDUSIND OWN BANK A/c – 0015-R24861-050			
	Receipts	Payments	Total		Receipts	Payments	Total	
	Amount	Amount	Instances verified	Instances observed	Amount	Amount	Instances verified	Instances observed
July 1 2010 to March 31 2011	23,64,000	1,77,33,515	749	26	75,34,086	18,349	140	17
April 1, 2011 to Dec 31, 2011	56,25,088	56,00,000	371	38	11,62,587	5,97,033	63	23
Total	79,89,088	2,33,33,515	1120	63	86,96,673	6,15,382	203	40

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2.3. Summary of instances observed are as under:

Bank	Instances observed	Instances verified
HDFC Bank Own A/c – 00080340031331	63	1,120
IndusInd BANK Own A/c – 0015-R24861-050	40	203
Total	103	1,323
Percentage	7.79	

2.4. However, the amounts mentioned above were received and paid through 'own' accounts, as shown above, were not shown in the respective clients' ledgers. This was observed from the client ledgers, bank books and bank statements of the accounts in the months from July 1, 2010 to February 29, 2012.

2.5. To a query by the Exchange, the Member explained that it had been acting as an intermediary to facilitate purchase/sell of shares of unlisted companies and that the monies received in own account and paid through own account were used for the said purpose and hence not recorded in the client ledgers maintained for the purpose of currency futures transactions. The Member is only the member of MCX Stock Exchange Ltd which offers dealings only in Currency Derivatives Segment. - It is seen that the member has membership rights only in the Currency Derivatives Segment of MCX-SX and it is not a Member of any of the Stock Exchange which has equity segment.

2.6. Summary of instances of such purchase and sale transactions observed are placed as follows:

Instances during the period verified	Total value of such buy transactions (Rs. in crores)	No. of instances in which Member bought shares on behalf of other entities	Total value of such sell transactions (Rs. in crores)	No. of instances in which Member sold shares on behalf of other entities	No. of entities with whom Member dealt
July 1, 2010 to March 31, 2011	59.62	131	61.03	393	108
April 1, 2011 to February 29, 2012	11.16	32	11.09	131	63

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Instances during the period verified	Total value of such buy transactions (Rs. in crores)	No. of instances in which Member bought shares on behalf of other entities	Total value of such sell transactions (Rs. in crores)	No. of instances in which Member sold shares on behalf of other entities	No. of entities with whom Member dealt
Total	70.78	163	72.12	524	

- 2.7. In order to substantiate the fund flow, the Member was asked to submit supporting documents for the above transactions undertaken by it.
- 2.8. The Member has submitted copies of bills issues for the said transactions of purchase/sell of unlisted securities for some transactions, except for 10 transactions.

3. Inspection Finding – Wrong / False reporting of client margin collection

- 3.1. During inspection, 8 instances of margin reporting were verified. Out of the said 8 instances, 4 instances were pertaining to the period prior to September 1, 2011 and 4 instances were pertaining to the period on or after September 1, 2011.
- 3.2. In 1 instance pertaining to the period prior to 1-Sep-11 and in 3 instances pertaining to the period on or after 1-Sep-11, the Member reported correct margin to the Exchange.
- 3.3. In 4 instances (3 prior to 1-Sep-11 and 1 on or after 1-Sep-11), the Member wrongly/falsefully reported margin to the Exchange.
- 3.4. On verification of the ledgers of the said clients, it was observed that the ledgers showed enough credit balances during the relevant days. However, it was found that the four cheques underlying such balances on the relevant days were not credited to the Member's bank account. Hence, while considering the margin collected by the Member, the amounts of cheques (uncleared) were not considered and the same was treated as 'wrong reporting/false reporting' of margin.
- 3.5. Details of the above mentioned wrong/false reporting are as under

Sr. No.	Date	Client Name	Margin reported	Margin available	Wrong / false reporting of margin	Percentage / instances of wrong reporting
1	11-Mar-11	Suman Wooltex Pvt. Ltd.	810799	0	81799	Rs.16,14,961/- 85.58%
2	24-Mar-11	P S Apartment Pvt Ltd	716640	181218	535422	(3 instances)

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Sr. No.	Date	Client Name	Margin reported	Margin available	Wrong / false reporting of margin	Percentage / instances of wrong reporting
3	24-Mar 11	Vinny Textiles Pvt Ltd	268740	0	268740	
4	17-Oct-11	Merlin Holdings Pvt Ltd	78021	0	78021	Rs. 78021/-

4. Member's Reply on Business of dealings in unlisted securities & Depositing client money in 'own' bank account and wrong/false reporting of margin:

4.1. In respect of business of dealings in unlisted securities, the Member had, vide its letter dated May 10, 2012, submitted that it has stopped dealings in unlisted securities with effect from January 2, 2012 after receiving advise from the Exchange pursuant to the previous year's inspection.

4.2. In respect of wrong/false reporting of margin, during inspection, the Member explained that the cheques for the necessary margin amounts were received from the clients on the trade day itself and were presented in its bank. However, since the client had squared off their positions on the next day, the clients stopped the payment of the cheque issued to the Member. In support of its claim, the Member has submitted copies of the pay-in slip and counter foils for the cheques of the necessary margin amounts deposited in the bank.

5. Disciplinary Action Proceedings:

5.1. Hearing Notice

Vide letter no. MCX-SX/INSP/2011-12/615/4020 dated May 8, 2012, the Exchange granted personal hearing to the member before the DAC on May 22, 2012.

5.2. Personal Hearing before the Disciplinary Action Committee

5.2.1. MVPL was granted an opportunity of hearing before the Disciplinary Action Committee of the Exchange on May 22, 2012. Mr. Nirav Gathani, the authorised representative of MVPL, appeared in person before the Committee. He made the following submissions during the hearings:

- a) In case of business of dealings in unlisted securities & depositing client money in 'own' bank account, Mr. Nirav Gathani stated that they have stopped dealings in unlisted securities with effect from January 2, 2012 after receiving advise from the Exchange pursuant to previous year's inspection.
- b) In case of wrong/ false reporting of client margin to the Exchange, Mr. Nirav Gathani reiterated that cheques for the necessary margin amounts were received from the clients on the trade day itself. However, since the clients had squared off their positions on the next day, they stopped the payment of the cheque issued to the Member. Mr. Gathani further stated that they had submitted copies of the pay-in slip and counter foils for the cheques of the necessary margin amounts deposited in the bank in support of his claim.
- c) The Committee advised Mr. Gathani to submit following documents in support of his claim:
- i. Intimation from the Bank regarding cheque dishonor and return of cheques
 - ii. Bank statements of relevant clients' bank accounts
- d) Since Mr. Gathani could not produce the above mentioned documents on the day of the meeting, he was advised to submit the same within 15 days from the date of the meeting to the Committee.
- e) Later, by a letter dated June 5, 2012, the Member has submitted that it was unable to provide the documents regarding cheque dishonor and return of cheques of clients before the Committee. The Member further stated that since they were unable to meet the requirements of the Committee, they knew that they would be liable to face the consequences resulting in penalty of Rs. 110320/- as well as suspension for a period of 6 days. They have submitted that this would be unbearable and requested to reduce the penalty and reconsider the suspension as they may lose the business from clients.

6. Consideration of Issues

- 6.1. We have carefully considered the material on record including the replies filed and submissions made by MVPL and understand that:

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Business of dealings in unlisted securities & Depositing client money in 'own' bank account

6.1.1. Depositing of moneys received from clients in the own bank account is in violation of Regulations 15.1.6.1(a) & 4.4.13 of the Regulations of the Exchange, which read as under:

Regulation no. 15.1.6.1(a) – *“Every Trading Member shall keep for a period of three years such books of accounts, as shall be necessary, to show and distinguish in connection with his business as a Trading Member and also to comply with Rule 15 of Securities Contracts (Regulation) Rules, 1957 :*

- i. The moneys received from or on account of and moneys paid to or on account of each of his constituents; and*
- ii. The moneys received and the moneys paid on Trading Member's own account.”*

Regulation 4.4.13 – *“In addition to the guidelines issued by SEBI relating to the regulation of transactions between constituents and brokers, member shall at all times keep the money of the constituent in a separate bank account. The bank will not be able to access the constituents account to meet the brokers defaults in anyway unless specified by the constituent.”*

6.1.2. This violation was also observed in the last inspection conducted covering the period May 7, 2009 to June 30, 2010.

6.1.3. The Exchange had taken action (vide letter dated December 2, 2011) against the Member for the same by levying a combined penalty of Rs. 10,000/- for the violation of dealings in unlisted securities and non-segregation of own and client funds.

6.1.4. The Member was also directed to stop this activity and confirm compliance by January 2, 2012. Accordingly, vide letter dated December 31, 2011, the Member had submitted

that it has stopped this activity with effect from January 2, 2012. This was also verified from the relevant records submitted by the Member and found to be correct.

6.1.5. We find that the Member had been corresponding with the Exchange regularly on the same issue found during the previous years' inspection. He had stopped the activities in question by the date laid down by the Exchange. In light of the same, we are of the considered view that no further action is necessary on this count.

Wrong / False Reporting of Client margin

- 6.2. We understand that MVPL was also informed in writing vide letter no. MCX-SX/INSP/2011-12/615/5676 dated May 25, 2012 about submitting necessary document showing margin money received from clients within 15 days from the date of the meeting.
- 6.3. Vide letter dated June 5, 2012, the Member informed that they were unable to provide the documents regarding cheque dishonor and return of cheques of clients before the Committee. The Member further stated that since they were unable to meet the requirements of the Committee, they knew that they would be liable to face the consequences resulting in penalty of Rs. 110320/- as well as suspension for a period of 6 days. They have submitted that this would be unbearable and requested to reduce the penalty and reconsider the suspension as they may lose the business from clients.
- 6.4. We have carefully considered the matter and feel that in the absence of any credible evidence as to alleged collection and deposit of the cheques and their subsequent dishonor, we would not be able to accept the submission that the cheques were actually received from the client and deposited. The pay-in slip is not sufficient for this purpose. The only inference that can be drawn in the circumstances is that the margins were not collected by the Member from the clients in the 4 instances under question. Consequently, their report of client margin collection made to the Clearing Corporation was wrong/false.

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7. Directions

7.1. Business of dealings in unlisted securities & Depositing client money in 'own' bank account

7.1.1. As discussed above, no action needs to be taken against the member for this charge.

7.2. Wrong / False Reporting of Client margin

7.2.1. This charge is proved as discussed above.

7.2.2. The Member also had the opportunity to report the correct margin (short margin) to the Exchange up to T+2 days upon realizing that the clients had given stop payment instructions after squaring off their positions the next day. The Member could then have paid the penalties prescribed for short reporting of margin. However, the Member did not do so.

7.2.3. We note that in terms of the penalty structures evolved by the Exchange/SEBI, the Member is liable to the following penalty for the contravention:

7.2.3.1. In case of wrong reporting of client margin collection for instances prior to September 1, 2011 – following action was prescribed as per Exchange penalty circular no. MCX-SX/INSP/528/2011 dated March 1, 2011:

- a) A monetary fine of Rs. 32,300/- [2% on the wrongly reported amount of Rs. 16,14,961/-];
- b) The Member may be suspended from trading for 5 days.

7.2.3.2. In case of false reporting of client margin collection for instances on or after September 1, 2011 – following action is prescribed as per SEBI circular No. CIR/DNPD/7/2011 dated August 10, 2011 is as under:

- a) A monetary fine of Rs. 78,021/- [100% of the falsely reported];
- b) The Member may be suspended from trading for 1 day.

7.2.4. While this is so, we also note that in all the 4 instances, the respective clients had squared off the positions the very next day, as submitted by the Member and verified by the Exchange. We note that the penalty mentioned for the period recorded in para 7.2.3.1 arises out of penalty structure specified by the Exchange which is indicative, while the penalty mentioned in para 7.2.3.2 arises out of penalty structure laid down by SEBI, which is mandatory. In light of the above, we feel it would be commensurate if the

penalty for the period mentioned in para 7.2.3.1 is reduced and that in para 7.2.3.2 is maintained as specified by SEBI.

7.2.5. We accordingly direct that the following penalty shall be imposed on the member:

7.2.5.1. For wrong reporting of client margin collection for instances prior to September 1, 2011:

- c) A monetary fine of Rs. 32,300/-;
- d) The Member may be suspended from trading for 5 days.

7.2.5.2. In case of false reporting of client margin collection for instances on or after September 1, 2011:

- a) A monetary fine of Rs. 78,021/-;
- b) The member may be suspended from trading for 1 day.

7.2.5.3. Both the suspensions shall run concurrently and he shall undergo a total suspension of 5 days.

7.2.6. To afford the Member an opportunity to approach the suitable forum in case he is aggrieved by this order and to enable him to square off his existing positions, we hereby direct that this order shall take effect after 45 days from today.



Asha Das
21 August, 2012
New Delhi



Prem Rajani
24 August, 2012
Mumbai

For MCX-Stock Exchange Ltd.


Company Secretary