



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. 1

In the matter of

Appeal No. 16 of 2016

First National Equities Limited

...Appellant

Versus

Mr. Nasir Askar

Director/HOD, Licensing & Capital Issue Department,

Securities Market Division, Securities and Exchange

Commission of Pakistan

...Respondent

Date of Hearing: 05/10/16

### Present:

#### For the Appellant:

(i) Mr. Ali A. Malik, Chief Executive Officer, First National Equities Limited

#### For the Respondent:

(i) Mr. Nasir Askar, Director (SMD)

(ii) Ms. Asima Wajid, Deputy Director (SMD)

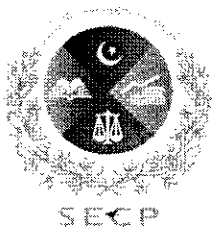
### ORDER

1. This order is in appeal No.16 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 against the order dated 19/01/16 (Impugned Order) passed by the Respondent.
2. Brief facts of the case are that as part of Capital Adequacy requirement as stipulated in Regulation 19.3.2 of the Karachi Stock Exchange Limited Rule Book, 2014 (Pakistan Stock Exchange (PSX) Rule Book), First National

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Equities Limited (Appellant) submitted the Net Capital Balance (NCB) Certificate as of 30/06/15 to PSX which was verified/audited by Tariq Abdul Ghani Maqbool & Co. Chartered Accountants (Auditor). Review of NCB Certificate as of 30/06/15 submitted by the Appellant to PSX revealed that while calculating the NCB, the Appellant has excluded/understated its current liabilities amounting to Rs.432 million. The annual audited financial statement of 30/06/15 of Appellant depicted total current liabilities at Rs.519 million. In calculation of the NCB, however, current liabilities of only Rs.87 million was taken into account. The NCB, therefore, was prima facie overstated.

3. Show Cause Notice dated 15/12/15 (SCN) was issued to the Appellant under section 22 of the Securities and Exchange Ordinance, 1969 (Ordinance) for prima facie violation of Rule 2(d) of the Securities and Exchange Rules, 1971 (SE Rules). On not receiving any written reply to the said SCN within the stipulated time period, the Appellant vide letter dated 14/01/16 was reminded to submit its written reply to the Respondent. Subsequently, written reply to the SCN was received by the Respondent on 18/01/16.
4. The Respondent dissatisfied with the response of the Appellant directed the Appellant to recalculate its NCB in accordance with third schedule of SE Rules and guidelines for calculation of NCB issued by the Commission and submit the revised NCB to the Commission by 30/04/16 positively.
5. The Appellant preferred the appeal on the grounds that the Appellant rightly calculated its Net Capital Balance (NCB). The mentioning of Rs.519 million as current liabilities in financial statement as of 30/06/15 was neither admission nor conclusive proof of existence of the said liabilities. The breakup of the remaining alleged current liabilities excluding the figure of Rs.87 million pertain to three entities namely i) Bank of Punjab (BOP), ii) Bank Alfalah and iii) Abandoned Properties Organization (APO). There is nothing payable to Bank Alfalah within twelve months and, therefore, the same cannot be treated as a current liability as per third schedule of the SE Rules. The treatment of the figures pertaining to BOP and APO as current liabilities is merely an employed

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metaphor by the auditors for accounting purposes and is clearly qualified in para 19.3 and 23.2 of the financial statements. The issue of APO like in the matter of BOP, has also been pending adjudication before the Honourable High Court. The Appellant has filed the said litigation and there is every probability that the same is decided in favour of the Appellant, keeping in view its clear stance on the matter. The Appellant has not only categorically denied existence of any liabilities as alleged but has also filed counter claims. The Commission is a public authority that derives its authority from a statute and, therefore, it is obligated to act justly within the parameters of the law. The Impugned Order is against the law and facts of the case and, therefore, is liable to be set aside.

6. The Respondent rebutted the arguments of the Appellant on the grounds that the Respondent observed non-compliance of the SE Rules and guidelines issued by the Commission dated 03/07/13 despite several SCNs and directives issued to the Appellant from time to time. The Appellant had not followed the format specified in Third Schedule of the SE Rules and guidelines for calculation of NCB issued by the Commission dated 03/07/13 in letter and spirit. The Third Schedule of the SE Rules and guidelines issued by the Commission for calculation of NCB does not allow excluding current liabilities based on the reasons given by the Appellant. The stance of the Appellant, therefore, for excluding the current liabilities for calculation of NCB is not tenable.
7. We have heard the parties i.e. the Appellant and the Respondent. The Appellant has denied that any additional current liability exists as per the third schedule to the SE Rules other than Rs.87 million which has already been accounted for in calculation of NCB. The Respondent has argued that the Appellant had not followed the format specified in Third Schedule of the SE Rules and guidelines for calculation of NCB issued by the Commission.
8. We are of the view that the Appellant did not provide a revised NCB by 30/04/16 as instructed by the Respondent and instead filed the instant appeal. The Appellant, however, at the hearing submitted a revised NCB as of

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30/06/16. In the interests of justice, we remand the matter to the Department to reassess the fresh NCB submitted by the Appellant.

(Fida Hussain Samoo)  
Commissioner (Insurance)

(Zafar Abdullah)  
Commissioner (SCD)

Announced on: 02 NOV 2016