

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 62 of 2012

M/s First National Equities Limited

...Appellant

Versus

Mr. Imran Inayat Butt

Director/HOD (MSCI),

Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing

02/04/15

ORDER

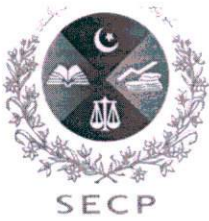
Present:

For the Appellant:

Mr. Ijaz Chaudhary, Advocate

Department representatives:

- i. Mr. Abid Hussain, Director (SMD)
- ii. Mr. Amir Saleem, Joint Director (SMD)
- iii. Mr. Hafiz M. Wajid Wahidi, Deputy Director (SMD)



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1. This order is in appeal No. 62 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 ("SECP Act") against the order (the "Impugned Order") dated 06/11/12 passed by the Respondent.
2. The brief facts of the case are that M/s First National Equities Limited ("Appellant") is registered with the Commission under the Brokers and Agents Registration, Rules, 2001 ("Brokers Rules") and on perusal of the trading data of KSE for the period 01/01/12 to 15/07/12 ("Review Period"), it was observed that out of the total trading volume of 15.85 million shares in the scrip of the First National Equities Limited ("FNEL") approximately 82% was traded by the associates of the Appellant which resulted in increase in share price from Rs. 2.72 on 01/12/12 to Rs. 8.50 by 11/04/12 which is almost 212.5% increase. Further, perusal of the historical data of the KSE revealed that the traded volume of the scrip of FNEL during the Review Period was the highest since January 2009. Comparative trading volumes for the period started from January 2009 till July 15, 2012 is tabulated below:

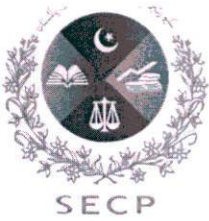
Table 1

Sr. No	Period	Total Volume (Shares)	Average Monthly Volume (Shares)
1.	January 2009 to December 2009	4,120,471	343,373
2.	January 2010 to December 2010	246,636	20,553
3.	January 2011 to December 2011	7,860,477	655,039
4.	January 1, 2012 to April 30, 2012	4,393,536	1,098,384
5.	May 1, 2012 to June 10, 2012	2,437,679	1,832,841
6.	June 11, 2012 to July 15, 2012	9,026,951	7,781,854

The above table categorizes the Review Period into three segments:

January 1, 2012 to April 30, 2012 ("RP-1")

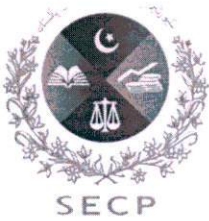
May 1, 2012 to June 10, 2012 ("RP-2")



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June 11, 2012 to July 15, 2012 (“RP-3”)

3. The analysis of the trading record during RP-3 depicted that First Florence Developers (Private) Limited (“FFD”) sold 7.91 million shares of FNEL at an average rate of Rs 6.11 per share through the Respondent, which is approximately 87.6% of the total trading volume in the scrip of the FNEL during the RP-3. As per country record of FFD, Mr. Ali Aslam Malik and his wife Ms. Adeela Ali are the only directors of the said company. Moreover, both of them owned 100% shares of FFD. Upon further examination of the record, it was noted that all trades executed by FFD through the Respondent matched with NAMCO Balance Fund (“NAMCO”) during RP-3.
4. The trading record of the KSE depicted that during RP-1, clients of the Appellant traded in a manner that resulted in price hike in the scrip of the FNEL to almost 212.5% as referred above. During RP-2, NAMCO bought 1.780 million shares at an average rate of Rs. 6.82 per share. Further analysis revealed that NAMCO during the Review Period bought 11.08 million shares of the scrip of FNEL and out of that NAMCO bought 8.325 million shares of the FNEL during RP-3 at an average rate of Rs 6.11 per share.
5. Detailed analysis of the trading record revealed that during RP-1 NAMCO bought 0.976 million shares of the scrip of FNEL at an average rate of Rs 7.17 per share, which includes buying of 461,600 shares from Mr. Tariq Aleem, a client of Appellant. During RP-2 NAMCO bought 1.377 million shares of the scrip of the FNEL from Mr. Tariq Aleem at an average rate of Rs 6.83 per share. During RP-3 NAMCO bought 7.910 million shares at an average rate of Rs 6.13 per share from FFD, which constitutes 87.6% of the traded volume in the scrip of FNEL during RP-3. The analysis of the Review Period is summarized below in the tabular form:

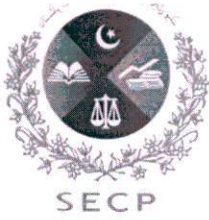


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Table 2

Period	Total Market Volume (Shares in Million)	Sold by FFD		Bought by NAMCO		NAMCO Matched Volume as % age of NAMCO's Trading	
		Shares (Million)	% age of Total Market Volume	Shares (Million)	% age of Total Market Volume	With FFD	With Tariq Aleem
RP -1	4,393			0.976	23%		47%
RP-2	2,437			1.78	73%		77%
RP-3	9,026	7.91	87.6%	8.32	92%	95%	
Review Period	15,856			11.08	70%	71.4%	17%

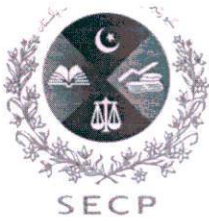
6. The company registration record maintained by the Commission exhibits that Mr. Ali Aslam Malik is also the Chief Executive Officer (“CEO”) of the Respondent; CEO of FFD and Chairman of the First National Equities Group (“FNE Group”). The record further reveals that National Asset Management Company Limited is an associate company of the FNE Group and is registered with the Commission as a Non- Banking Finance Company under the non-Banking Finance Companies Rules, 2003. NAMCO is the balance fund managed by the National Asset Management Company Limited. From the above, it appeared that the Appellant was involved in creation of artificial volume in the scrip of the FNEL and execution of the scheme in concert with the above referred participants.
7. Show Cause Notice dated 31/07/12 (“SCN”) was issued to the Appellants under section 22 of the Securities and Exchange Ordinance, 1969 (the “Ordinance”) read with Rule 8 of the Brokers Rules and required the Appellant to submit its written reply within seven days of the date of the SCN. The Appellant was further required to appear before the Respondent on 16/08/12. The Appellant requested a further



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extension of 15 days for submission of written reply and date of hearing to be fixed thereafter. The Respondent acceding to the request of the Appellant allowed the extension and the Appellant was required to submit its written reply by 28/08/12 and appear for hearing before the Respondent on 30/08/12. On 29/08/12, the Appellant once again requested for extension of time and the Respondent required the Appellant to appear before the Respondent on 05/09/12. The Respondent vide letter dated 03/09/12 communicated that Mr. Ali Aslam Malik is out of the country and requested for extension for written reply be granted until 22/09/12 and date of hearing fixed thereafter. The Respondent granted extension to the Appellant for the third time upon its request and required the Appellant to appear before the Respondent on 25/09/12.

8. On 24/09/12, the Respondent received a letter from Minto & Mirza - Advocates & Solicitors ("Representative") communicating to the Respondent that they have been appointed to represent the Appellant by Mr. Ali Aslam Malik. The Representative of the Appellant requested for further extension of thirty days to prepare reply to the SCN and also requested for scheduling the hearing date in the matter. The Respondent again for the fourth time granted extension to the Representative of the Appellant vide letter dated 24/09/12 and required the Appellant to submit written reply by 11/10/12 and appear before the Respondent on 15/10/12. The Respondent also communicated that in case of failure to appear, the matter shall be decided ex-parte. The Representative of the Appellant submitted its written response to the SCN Appellant vide their letter dated 10/10/12. However, the Representative of the Appellant on 12/10/12 requested the Respondent for further extension of the hearing until November 2012. The request for extension until third week of November 2012 was not tenable, however, considering the busy schedule of the Representative of the Appellant, the Respondent granted extension for fifth time and required the Appellant to appear before the Respondent on 22/10/12. The Representative of the Appellant failed to appear before the Respondent and no communication was received



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thereafter. The matter was decided by the Respondent on basis of the written response submitted earlier on 10/10/12 which was found unsatisfactory

9. The Respondent dissatisfied with the response of the Appellant held that the violation of the Rules and Regulations is a serious matter which entitles the Commission to suspend the Appellant's registration, however this power was not being exercised at present and in exercise of the powers under section 22 of the Ordinance, a penalty of Rs 500,000 was imposed on the Appellant.
10. The Appellant has preferred the instant appeal against the Impugned Order. The Appellant has requested the Appellate Bench to remand the matter to the relevant department as no hearing was conducted prior to the passing of the Order. The department representatives have argued that several hearing opportunities have been provided to the Appellant, however, the Appellant despite being given several extensions failed to appear before the Respondent and a warning was given that matter may be decided ex-parte in case of non-appearance.
11. We have heard the parties. In order to ensure the best interests of justice and to ensure that the Appellant is given a fair opportunity of being heard, we set aside the Impugned Order and remand the matter to the Respondent with the direction to decide the matter within one month of the date of this Order.
12. Parties to bear their cost.

(**Fida Hussain Samoo**)
Commissioner (Insurance)

(**Tahir Mahmood**)
Commissioner (CLD)

Announced on:

07. JUL 2015