

Securities and Exchange Commission of Pakistan

EFORE APPELLATE BENCH NO. 1

In the matter of

Appeal No. 07 of 2017

- 1) TRG Pakistan Limited
 - 2) Mr. Ziaullah Khan Chishti,
Chief Executive TRG Pakistan Limited
- ...Appellants

Versus

Commissioner, Securities Market Division (SMD),
Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing 30/10/17

Present:

For the Appellant:

- (i) Ms. Rahat Latif, Head of Internal Audit TRG
- (ii) Vaseeq Khalid, Partner/Lawyer Mohsin Tayebaly and Co.

For the Respondent:

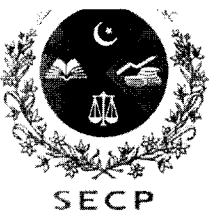
- (i) Mr.M.Farooq Bhatti, Additional Director (SMD)
- (ii) Mr. Javed Akhtar Malik, Joint Director (SMD)
- (iii) Mr. Asif Khan, Deputy Director (SMD)

ORDER

1. This Order is passed in the matter of Appeal No.07 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the order (Impugned Order) dated 09/01/17 passed by the Respondent.

Appellate Bench No. 1

Appeal No.07 of 2017

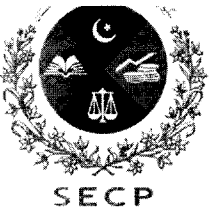


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2. The brief facts of the case are that TRG Pakistan Limited (Appellant No.1) is a company listed on Pakistan Stock Exchange (PSX– formerly Karachi Stock Exchange), submitted its annual audited accounts for the financial year ended 30/06/15 and quarterly accounts for quarter ended 30/09/15 to the Commission and PSX. However, the Appellant No.1 did not upload the said financials on its website as required under Commission's Notification No. SRO 634(I)/2014 dated 10/07/14. The Appellant No.1 was, therefore, advised vide letter dated 09/12/15 followed by reminder dated 15/12/15 to place its financial statements on its website. However, the Appellant No.1 did not upload its financials on its website. Review of trading data of Appellant No.1 on Karachi Automated Trading System (KATS) revealed substantial fluctuations in its volume, during the period from 15/12/15 to 29/12/15, details are as under:

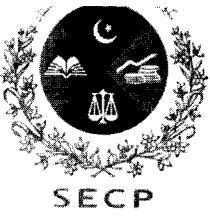
Date	Volume
12/15/2015	18,675,000
12/16/2015	17,383,000
12/17/2015	10,730,500
12/18/2015	5,176,500
12/21/2015	2,661,000
12/22/2015	4,883,000
12/23/2015	3,936,00
12/28/2015	11,185,000
12/29/2015	16,091.000

3. In the absence of any announcement, the Appellant No.1 was directed under section 97 of the Securities Act 2015 (Act) vide letter dated 30/12/15 to submit clarification in the matter of PSX before the opening of the next day trading session. However, the Respondent did not disseminate the said information to PSX before opening of the next day trading session.



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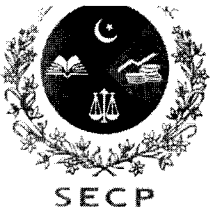
4. The Commission in view of Appellant No.1's non-compliances with the earlier directions directed Appellant No.1 under section 100 of the Act to immediately:
- Disseminate details of any matter or development in terms of section 97 of the Act that is or may be relevant to the unusual movements in its trading volume to the public through PSX.
 - Place complete audited financial accounts/reports on its website and share copy of the same with PSX, and
 - Provide an update to the Commission by 06/01/16 positively.
5. In response to Commission's directions dated 30/12/15, the CEO (Appellant No.2) vide letter dated 05/01/16 stated that, "*the management of the Company was only made aware of possible speculation through the aforementioned letter issued by the Commission. We would like to clarify there is no final decision to list any of our non-public subsidiaries on an international exchange, nor is there a plan to restructure TRG Pakistan Limited....*" A video message of the CEO of Appellant No.1 and Afiniti (a wholly owned subsidiary of TRG International which in turn is the subsidiary of TRG), was uploaded on YouTube on 30/12/15. In the video message, while informing the public regarding reasons for name change of SATMAP to Afiniti, he also informed that "*we have an IPO, that is approaching fast*". Comparison of the statement contained in the video message with the contents of the letter dated 05/01/16 revealed that Appellant No.1 and its CEO were, prima facie, well aware of the reasons for fluctuation in its trading volume and its future course of action. Further, the aforesaid video message, prima facie, also negated the stance of the Appellant No.2 that, "*no final decision to list any of our non-public subsidiaries*" was taken. From the above, it, prima facie, appeared that the Appellant No.1 and Appellant No.2 had provided information to the Commission under section 97 of the Act, which was untrue, incorrect and misleading. Furthermore, the Appellant No.1 did not place its complete audited financial accounts/reports (along with notes) on its website despite directions given to it under section 100 of the Act. Furnishing of untrue, incorrect and misleading information under section 97 of the Act and non-placing of the



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financial statements on its website in contravention of directions under section 100 of the Act prima facie, attract penal provisions contained in section 159(5) and section 159(6) of the Act.

6. The Commission took cognizance of the abovementioned alleged violations and issued Show Cause Notice dated 02/02/16 (SCN) to the Appellants. The Appellants were directed to file written response to the SCN by 12/02/16 and appear in person or through authorized representative on 18/02/16 to explain the stance in person. The Company Secretary vide letter dated 12/02/16 filed written response to the SCN and requested for adjournment of the hearing which was accepted. Hearings scheduled for 26/02/16, 17/03/16, 31/03/16, were adjourned on the request of the Appellants, while hearing scheduled for 21/04/16 was adjourned on administrative grounds. The Company Secretary of Appellant No.1 vide letter dated 12/02/16 filed written response to the SCN and requested for adjournment of the hearing which was accepted. Hearings scheduled for 26/02/16, 17/03/16 and 31/03/16 were adjourned on the request of the Appellants, while hearing scheduled for 21/04/16 was adjourned on administrative grounds. The Company Secretary vide letter dated 05/05/16 requested that hearing in the matter may be fixed between 18/07/16 and 24/07/16 because Appellant No.2 who was outside Pakistan intended to attend the hearing in person. The request was accepted and hearing in the matter was rescheduled for 21/07/16. On the given date, the Appellant No.2 who was outside Pakistan, intended to attend the hearing in person. The request was accepted and hearing in the matter was rescheduled for 21/07/16. On the given date, the Appellant No.2 appeared before the Respondent along with Mr. Hassan Farooq, Company Secretary, Mr. Vaseeq Khalid, Legal Counsel Mohsin Tayebaly and Company and Ms. Cheryl Dukelow, Commercial Counselor of United States of America made their submissions.
7. The Respondent dissatisfied with the response of the Appellants imposed a penalty of Rs 2,000,000 on the Appellant No.1 and Rs. 1,000,000 on Appellant No.2, for non-

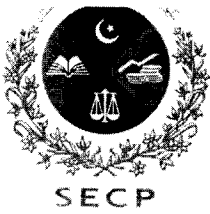


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compliance with the direction given under section 100 of the Act (Placement of audited financial accounts/reports on its website) and providing information under section 97 of the Act which was incorrect, untrue and misleading. Furthermore, the Appellants were directed to ensure compliance with regulatory framework in letter and spirit in the future.

8. The Appellants preferred the Appeal on the following grounds:

- (a) The Impugned Order has been passed by the Respondent without considering and/or evaluating the facts and circumstances pertaining to the Appellants including the factual circumstances existing since the issuance of the SCN and instead is based on completely unsubstantiated grounds and incorrect interpretation and application of law, rendering the Impugned Order illegal and unlawful.
- (b) Section 24-A of the General Clauses Act, 1897 clearly states that power to make any order or give direction must be exercised for the advancement of the purposes of the enactment. The Respondent has unequivocally violated the provisions of section 24-A of the General Clauses Act, 1897 as the powers conferred on the Respondent have not been exercised reasonably, fairly or justly. The Respondent has mechanically applied the provisions of the Act, with the predetermined decision to impose penalties on the Appellants. This is clearly evident from the Respondent's conclusion that the Appellant No.1 had failed to place its financial statements/reports on its website and the harsh stance and approach taken by the Respondent despite the fact that the Appellant No.1 had admitted that this was an oversight and that it took steps to place the same on its website based on the directions of the Commission. The harsh and disproportionate approach of the Respondent is more surprising as it had admitted in the SCN that the Appellant No.1 had filed its financial statements/reports with the Commission and the PSX in a timely manner. The Appellant No.1 had also pointed out to the Commission that the necessary reports had been dispatched to the shareholders, therefore, the conclusion was clear that the Appellant No.1 was acting transparently and was not hiding any information. The purpose and substance of the



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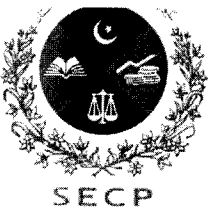
law is to make a company's financial information available and to ensure that shareholders are informed of its financial condition, which in substance had admittedly been complied with by the Appellant No.1, as it had provided the same to the Commission and PSX. Thereafter, the financials were uploaded on the Appellant No.1's website, after the Commission brought the same to the Appellant No.1's attention. Therefore, the conclusion reached by the Respondent under the Impugned Order is harsh, unfair, unreasonable and contrary to the provisions of the law.

- (d) The Respondent's conclusion in the Impugned Order that the statement by the Appellants pertaining to its website and the same being known by the PSX is untrue and incorrect, is baseless, unfounded and incorrect. The Respondent without obtaining any reliable evidence has completely accepted and based his conclusion on the stance of the PSX. The fact is that the Appellant's website is <http://trgcorp.com> and accordingly, the financial reports were placed on the said website instead of its group website i.e. www.trgworld.com. Without prejudice to the above, even if one was to take the argument that the PSX was not aware of the Appellant No.1's correct website, the Respondent has failed to demonstrate the harm or impact, if any, this had caused to any party or stakeholder. On the contrary, the financial reports were placed on the Appellant No.1's website, and the PSX confirmed to the Commission that it now had the correct website of the company on its record. The Respondent despite the above has baselessly concluded that the Appellant No.1 was in breach of the Commission's directive under section 100 of the Act and that its alleged untrue and incorrect statement attracted the penal provisions of section 159 of the Act. This conclusion is completely flawed, incorrect, arbitrary, unjust and, therefore, no penalty would be attracted or applicable.
- (e) With reference to the issue framed and the conclusion reached by the Respondent regarding whether the Appellant No.1 proactively disclosed to the PSX reasons for fluctuation in trading volume pursuant to section 97 of the Act, it is submitted that the same are incorrect, without reason, based on a misinterpretation and misapplication of law and facts and, therefore, should be set aside based on the following:



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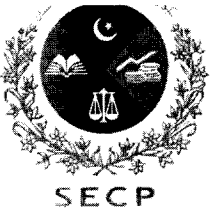
- (i) Section 97 of the Act states that a listed company shall respond promptly upon being informed that there are unusual movements in the price or volume of its traded securities. As clearly detailed in the response to the SCN, there was in fact no unusual trading volume over the period 15/12/15 to 29/12/15, which was substantiated by charts/graphs demonstrating the trading volume of the Appellant No.1's scrip over a period of 12 months. A perusal of the same will clearly illustrate that holistically, the period under review witnessed no unusual movements in volume, particularly since the Appellant No.1's share trading is generally volatile in nature and actually reflects a low point in the Company's share volumes both in absolute terms and in terms of value traded as a percentage of overall PSX value traded during that period. The table provided by the Commission in the notice dated 30/12/15 and, thereafter, by the Respondent in the SCN only depicts a myopic view of a few days which had been selected, without looking at the general trading flow of the Appellant No.1's scrip. Based on the above alone, it is clear that the provisions of section 97 of the Act were not applicable to the Appellant No.1 or its scrip during the period being considered by the Commission. The trading of the Appellant No.1's scrip does not have a discernible pattern (as demonstrated in the response to the SCN), therefore, the conclusion under the Impugned Order is flawed and unreasonable.
- (ii) Without prejudice to the above, the letter dated 30/12/15 (i.e. a Wednesday) was not received by the Appellant No.1 by day end Thursday. It is worth noting that the key management team was travelling and on account of the year-end holidays the said letter was brought to their attention on Monday 04/01/16, on which date the Appellant No.1 wrote to the Commission, informing the latter that the Commission's letter dated 30/12/15 had just been received and a response would be provided by the next day. This was complied with by the Appellant No.1 vide letter dated 05/01/16. The Respondent despite that has concluded that the Appellant No.1 failed to disseminate the requisite information promptly. It is evident that the Appellant No.1 did comply with the directions of the



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Commission promptly. Furthermore, since there was nothing to report, no harm or repercussion was caused to the Appellant No.1's stakeholders.

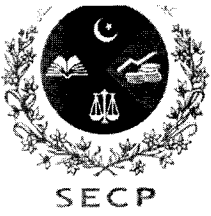
- (iii) The Respondent has made reference to the directive issued by him on 04/01/16. At such time he was not aware of the Appellant No.1's letter of the same date. However, despite this coming to the knowledge of the Respondent that the Appellant No.1 had responded to the Commission's letter dated 30/12/15, the Respondent still chose to base his reasoning on the directive letter, which, based on the facts, had been issued prematurely.
- (iv) The Respondent's assertion that the Appellant No 1's stance was contradictory in its letter dated 04/01/16 vis-à-vis in the response to the SCN, is incorrect as the Respondent appears to have misunderstood the contentions and communication of the Appellants. It is submitted that on 04/01/16, the Appellant No.1's management had an opportunity for the first time (keeping in mind that the key management team was travelling and the year end holidays) to respond to the Commission's letter dated 30/12/15 which was communicated to the Commission. In the response to the SCN it was clarified that even otherwise, the Appellant No.1 would have been given only 3 working days, had the management had knowledge of the same from the said date, to determine whether any substantial fluctuation had occurred (and the reasons for the same). However, this does not mean that the management actually had 3 working days; therefore, the Respondent's conclusion under the Impugned Order is incorrect. The purpose of the same was to highlight that the directive letter dated 04/01/16 was premature even from a practical perspective. Therefore, no contradictory stance has been taken.
- (v) Based on the above, the Appellant No.1 did provide information under section 97 of the Act in a prompt manner and, therefore, the provisions of section 159 are not applicable. Furthermore, as explained above, the statements of the Appellants



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are not contradictory, and, hence, the same are not untrue or incorrect in any manner.

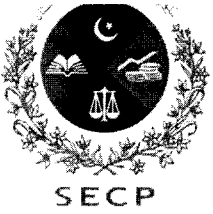
- (f) With reference to the issue framed and the conclusion reached by the Respondent regarding whether the Appellants committed a violation of the Act by providing information that was untrue, incorrect and misleading, it is submitted that the same is completely erroneous, without any substance, reasoning or analysis, unjustified, based on a misinterpretation and misapplication of law and facts, and accordingly should be set aside based on the following:
- (i) In terms of the letter dated 08/01/16, issued by the Appellant No.1, the latter provided a detailed explanation and response to the allegations raised by the Commission. The letter and the contents thereof have not even been mentioned by the Respondent under the Impugned Order, which supports the stance that the same is a predetermined decision on part of the Respondent. The Respondent would have not had to issue the SCN had the contents of the Appellant's letter been analyzed reasonably;
 - (ii) It was clear that no final decision had been taken by the Appellant No.1 or its management to list any subsidiary, which fact exists even today. Considering that such a significant amount of time has lapsed since the date of the SCN and date of the Impugned Order, one would have expected the Respondent to consider the factual circumstances existing since then, As no subsidiary of the Appellant No.1 has been listed even during this time, the Respondent, however, reached the conclusion that the Appellants had provided untrue, incorrect and misleading information based on message of Appellant No.2. As a result, it is evident that the reasoning and conclusion of the Respondent in terms of the Impugned Order is completely erroneous.
 - (iii) It had been communicated to the Commission that generic discussions to list all subsidiaries had been discussed even at previous annual general meetings of the Appellant No.1; however, the response of the Appellant No.1 dated 05/02/16 states that no final decision had been taken to list any subsidiary remains accurate even today.
 - (iv) The purpose of the law is to ensure that material information is provided to the shareholders; however, based on the above, it is apparent that there would be no



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motive or reason for the Appellants to provide any untrue, incorrect or misleading information. The Respondent has attempted to rely on circumstantial reasoning without providing any clear or logical analysis in reaching the conclusion that the statements of the Appellants are allegedly untrue and incorrect, which is contrary to the established principles of law and natural justice.

- (v) The examples provided by the Respondent from the Directors' reports for the years 2013, 2014 and 2015 would not even be applicable to information under section 97 of the Act or the set of circumstances as the said provision seeks to obtain information with respect to that time which is causing the unusual movement in trading or price. Therefore, it is further clear that the reasoning/analysis provided by the Respondent is completely flawed, from a factual and legal basis.
- (vi) Without prejudice to the above, even if one was to rely on the video message dated 30/12/15, wherein, the Appellant No.2 stated that the IPO is "*approaching fast*", the same would not be applicable to the supposed unusual movement in the share volume of the Appellant No.1 as the period under review was between 15/12/15 and 29/12/15. This factual matter had also been overlooked by the Respondent. Furthermore, if the Respondent's reasoning is based on the plain English expression of "*approaching fast*", he should have considered the fact that even one year on there has been no listing of any subsidiary of Appellant No.1. Since there was no final decision, the Appellants had not provided untrue, incorrect or misleading information to the Commission, therefore, the provisions of section 159 of the Act are not applicable;
- (vii) The Appellant No.1 has at no time tried to mislead its stakeholders or potential investors and complied with the applicable laws, including those pertaining to disclosures. Furthermore, as seen above, no contradictory information had been provided to the Commission and/or the Respondent; and
- (viii) The Respondent ignored the fact that at no time did the Appellant No.2 make a statement conveying the certainty of an IPO; nor was such an assertion made by the Appellant No.1. As a result, the Respondent's conclusion and decision is completely incorrect. Furthermore, not all activities or discussions are required to be disclosed to



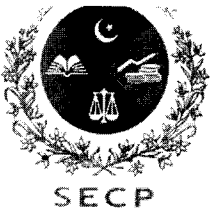
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the public, particularly where the same would be premature and may in fact mislead investors.

- (g) The arguments raised by the Appellants have been ignored while others have been misinterpreted in the Impugned Order and have not been adequately addressed. The Respondent has failed to exercise his powers in accordance with the applicable laws and has sought to justify a pre-determined decision. The penalty imposed upon the Appellant is unjust, excessive, harsh and unfair and is liable to be set aside.

9. The Respondent rebutted the arguments of the Appellants as follows:

- (a) The Impugned Order has been passed on merits of the case. The Appellants have failed to comply with the directive of the Commission. Pursuant to Commission's Notification No. SRO 634(I)/2014 dated 10/07/14, the Appellant No.1 was required to place on its website, financial statements and reports atleast twenty-one days prior to the date of holding of annual general meeting for the period ended 30/06/15 (AGM). However, Appellant No.1 did not upload its September 2015 accounts on its website. Appellant No.1 was, therefore, advised vide letter dated 09/12/15, followed by a reminder dated 15/12/15 to place its financial statements on its website. However, it failed to do so. Appellant No.1 was, therefore, directed under section 100 of the Act, inter alia, to immediately place its financial accounts on its website and submit compliance status by 06/01/16. However, Appellant No.1 failed to do so within the time limit prescribed in the directive. During the hearing, Appellant No.2 admitted that the financial reports could not be placed on website within the stipulated time limit, with the contention that same are now placed on Appellant No 1's website rather than its group website www.trgworld.com (which was previously available/communicated to PSX). In response to a query he stated that change in Appellant No.1's website was communicated to PSX since its inception. The matter was also taken up with PSX, which intimated on 29/07/16 that, "...the website address of Appellant No.1 available in our records is www.trgworld.com. However, in the recent letterhead of the company (dated 15/01/16), the website address is appearing as trgcorp.com. The company has not formally



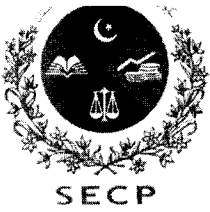
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intimated the change in its website address to the PSX...” Therefore, the Appellant, not only committed violation of the directive, but also made a misstatement during the course of hearing.

- (b) Review of trading data of the Appellant No.1 on Karachi Automated Trading System revealed substantial fluctuations in its volume, during the period from 15/12/15 to 29/12/15, details are as under:-

Date	Volume
12/15/2015	18,675,000
12/16/2016	173,383,000
12/17/2015	10,730,500
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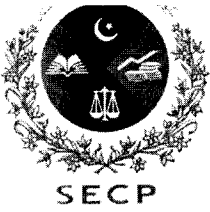
The Appellant No.1 was, therefore, directed under section 97 of the Act vide notice dated 30/12/15 to submit clarification and comments about any rumours of corporate restructuring, and/or listing on an international exchange of the Appellant No.1 and/or its subsidiaries, to PSX before opening of the trading session of next day. Therefore, the Appellant No.1 in terms of section 97 of the Act, was immediately required to make a public disclosure of either “*any matter or development of which it is aware that is or may be relevant to the unusual movements*” or “*statement of the fact if it is not aware of any such matter or development.*” However, no such intimation was provided to PSX. Therefore, the Commission on 04/01/16 directed the Appellant No.1 under section 100 of the Act to disseminate immediately details of any matter or development in terms of section 97 that is or may be relevant to the unusual movement in its trading volume to the public through PSX and communicate the compliance



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status of the Commission by 06/01/16. Meanwhile, the Appellant No.2 vide letter dated 05/01/16 responded the directive given under section 97 of the Act. The said disclosure was made with delay of 4 days and that was also made after issuance of directive under section 100 *ibid*. It is evident that the Appellant No.1 was non-compliant of the directive given under section 97 of the Act, as it did not make public disclosure within the stipulated time limit. Concerning the delay in filing of aforesaid disclosure, the Appellant No.2 stated that *"the company took steps to determine whether any substantial fluctuation was occurred"* and *"there were no unusual movement in its volume"*. Pursuant to directive given under section 97 of the Act, a listed company is required to convey any matter or development of which it is aware that is or may be relevant to the unusual movements or *"statement of the fact if it is not aware of such matter or development"* rather than investigating whether or not there was any substantial fluctuation. The justification for delayed disclosure is immaterial because section 97 of the Act requires prompt disclosures, once it is required by the Commission, because it may affect the opinion of investor or public at large. The Appellant No.1, however, failed to do so. Furthermore, review of the various responses of the Appellants to the Commission reveals that the Appellants have submitted self-contradictory statements to the Commission. The Appellant No.1 vide letter dated 04/0/16 stated, *"we have just received the Commission's letter dated 30/12/15. We will be responding with our comments by tomorrow"*. While in response to the SCN, the Appellant No.1 stated that *"the Commission prematurely issued the directions dated January 4, 2016 as the barely had 3 working days to respond effectively to the previous directions of the Commission"*. The statement filed in response to the SCN implies that Appellant No.1 had received the Commission's directive dated 30/12/15, well in time, however, the Appellant No.1 did not respond within the stipulated time limit and committed default.

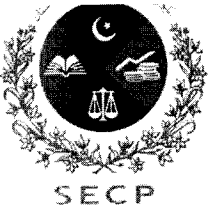
- (c) The Appellant No.1 vide notice dated 30/12/15 was directed under section 97 of the Act to furnish its comments *"about any rumors of corporate restructuring sale and/or listing on an international exchange of Appellant No.1/and/or its subsidiaries"*. The



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information of listing of subsidiary at international exchange was a material information; therefore, a fair and true information in this regard was required to be made public through PSX. The Appellant, however, in this regard took self-contradictory stances as under-

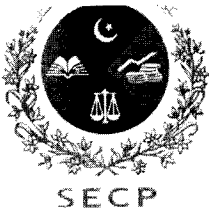
- (i) The Appellant No.2 vide letter dated 05/01/16 inter alia states that *“We would like to clarify that there is no final decision to list any of our non-public subsidiaries on an international exchange”*
- (ii) The Appellant No.2 in video message, while informing the public regarding reasons for name change of SATMAP to Afiniti, also informed *“we have an IPO, that is approaching fast”*.
- (iii) The Appellant No.1 vide letter dated 25/07/16 stated that, *“we would highlight that the company’s intention to evaluate a possible listing of its indirect subsidiary i.e. STAMP now Afiniti is by means a secret and is in fact, the Company in its Director’s report for the years 2013, 2014 and 2015 has consistently been making statements to this effect.”* In terms of section 97 of the Act, the Appellant No.1 was immediately required to make a public disclosure of either *“any matter or development of which it is aware that is or may be relevant to the unusual movements”* or *“statement of the fact if it is not aware of any such matter or development.”* However, no such intimation was provided to PSX. Therefore, the Commission on 04/01/16 directed the Appellant No.1 under section 100 of the Act to disseminate immediately details of any matter or development in terms of section 97 that is or may be relevant to the unusual movement in its trading volume to the public through PSX and communicate the compliance status to the Commission by 06/01/16.
- (iv) The Appellant No.1 vide letter dated 25/07/16 stated that *“we would highlight that the company’s intention to evaluate a possible listing of its indirect subsidiary i.e. STAMP now. Afiniti is by no means a secret and in fact, the Company in its Director’s report for the years 2013, 2014 and 2015 has consistently been making statements to this effect.”* Therefore, the comparison of the contents of the video



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message on YouTube, responses dated 05/01/16, 12/02/16 and verbal assertions made during the hearing/letter dated 25/07/16 with regard to disclosures in the audited annual accounts reveal that they are self-contradictory. The video message dated 30/12/15 is in plain English and the expression “*approaching fast*” in plain English means “*an event which is going to occur in short span of time*”. This is what an ordinary individual investor would understand after viewing the video, which till the date of Impugned Order was available for viewing and was viewed more than 1,700 times. Similarly, by reading the disclosures in the annual audited reports of the Appellant No.1 for the years ended 2013 to 2015, an ordinary individual investor would understand that the Appellant No.1 intends public offering of its non-listed international subsidiaries. However, the text of letter dated 05/01/16, response to the SCN and verbal assertions reveal that there was no intention of the management to list its unlisted foreign subsidiaries in the near future. As a listed company, Appellant No.1 was duty bound to provide information which was precise and clear, so that an investor could make a well-informed decision. In the instant case, providing contradictory information means that one of the information provided is incorrect, untrue and misleading. Therefore, the Appellants provided information in terms of direction issued under section 97 of the Act, which was untrue, incorrect and misleading.

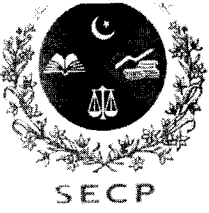
10. We have heard the parties. The Appellants have stated that the financials were uploaded on the Appellant No.1’s website, after the same was brought to the Appellant No.1’s attention by the Commission. The same was also communicated to the PSX vide their letter dated 15/01/16, wherein, the correct address of PSX was conveyed and it was informed that the financial statements of the Appellant No.1 were accessible. The Respondent has stated that the Appellant No.1 was required to place its financials on the website atleast twenty-one days prior to the AGM. Furthermore, reminders were sent vide letters dated 09/12/15 and 15/12/15 and, thereafter, a directive was issued under section 100 of the Act to ensure compliance. The PSX has confirmed to the Commission that it



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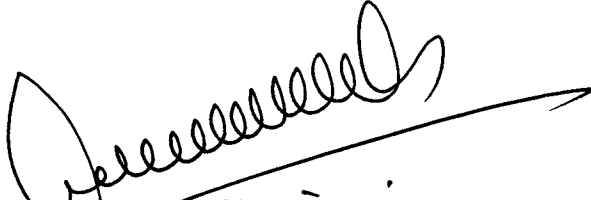
subsequently had the correct website of the Appellant No.1 on its record. We are of the view that even though there may have been some delay on part of the Appellants to upload the financials possibly due to the confusion regarding its website, the delay seems to be unintentional. Therefore, penalty for failure to upload the financials on the website is totally unjustified.


11. We concur with the Appellants that statement by the Appellant No.2 on YouTube video that IPO was "*fast approaching*" is altogether different from giving a specific time frame. Therefore, the Appellant No.1's statement that they have an, "*...intention to evaluate a possible listing of its unlisted subsidiary...*" does not contradict the statement by Appellant No.2 in the YouTube video. Furthermore, it has also been observed that there has been no listing of the Appellant No.1's unlisted subsidiaries even a year after the statement on the YouTube Video. It cannot be said, therefore, that there was any final decision on part of the Appellants to list any of the non-public subsidiaries. The total number of views on YouTube to date is also an extremely insignificant number. Furthermore, we have noted that fluctuations in the trading scrip of the Appellant No.1 do not have a discernible pattern and the Respondent has not been able to establish how the fluctuations in the trading scrip of Appellant No.1 during the period under review i.e. between 15/12/15 and 29/12/15 were unusual. The fluctuations in the trading volume seem to have no link to the video on YouTube of the Appellant No.2 and the investors seem to have not relied on this particular video. The Directors' reports for the years 2013, 2014 and 2015 have also no bearing on the trading activity of the Appellant No.1 for the period under review. Furthermore, there seems to be no deliberate false information or concealment of facts on part of the Appellants.



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12. In view of the above, the Impugned Order is set aside with no order as to costs.


(Zafar Abdullah)
Acting Chairman/Commissioner SCD


(Tahir Mahmood)
Commissioner (CCD-CLD)

Announced on: **20 DEC 2017**