

Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 94 of 2017

Ample Securities (Pvt.) Ltd

...Appellant

Versus

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

...Respondent

Date of Hearing: 19/12/19

Present:

For the Appellant:

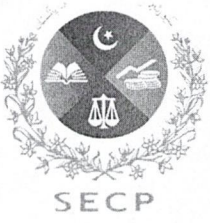
Mr. M. Hussain, CEO Ample Securities (Pvt.) Ltd.

For the Respondent:

- i. Mr. Osman Syed, Joint Director (Adjudication-1)
- ii. Mr. Sabeel Ahmed, Assistant Director (SMD)
- iii. Ms. Mehwish Naveed. Management Executive (Adjudication -1)

ORDER

1. This Order is passed in the matter of Appeal No.94 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated 31/07/17 (the Impugned Order) passed by Commissioner, Securities Market Division (the Respondent).
2. The brief facts of the case are that the Securities and Exchange Commission of Pakistan (the Commission) conducted a compliance review under section 79(3) of the Securities Act, 2015 (the



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Securities Act) to ascertain the compliance of Ample Securities (Pvt.) Limited (the Appellant) with the regulatory framework regarding financing and extension of credit during the period from 01/07/16 to 31/12/16 (the Review Period).

3. The Review, prima facie, revealed that the Appellant was non-compliant with the regulatory framework, detailed as under:

(i) The Appellant extended financing to the following clients by way of executing their trades despite non-availability of sufficient funds in clients' accounts in contravention of section 34 of the Securities (Leveraged Markets and Pledging) Rules, 2011 (the Securities Rules). The instances noted are as under:

Mr. M. Sibtain (Ledger code P564)

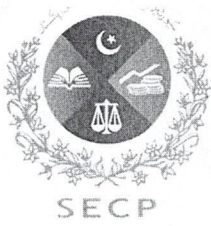
Date	Vch. No.	Particulars	Debit	Credit	Balance
28-10-16		Op-Balance			1,312,986.21 Dr.
28-10-16	CV100059	T+2 Bill #1838	1,114,513.62		2,427,499.83 Dr.
31-10-16	CV100063	T+2 Bill # 1862	977,294.68		3,404,794.51 Dr.
01-11-16	CV110001	T-2 Bill#1879	205,287.07		3,610,081.58 Dr.

Mr. Mustafa Pyaar Ali (Ledger code P567)

Date	Vch.No.	Particulars	Debit	Credit	Balance
22-11-16		Op.Balance			1,615,961.78 Dr.
22-11-16	CV110048	T+2 Bill # 2152	1,383,190.01		2,999,151.79 Dr.
24-11-16	CV110056	T+2 Bill #2184	1,882,547.09		4,881,698.88 Dr.
25-11-16	CV110060	T+2 Bill @2201	1,807,798.80		6,689,497.68 Dr.

Mr. Muhammad Anaf s/o Haji Haroon (Ledger code N803)

Date	Vch. No.	Particulars	Debit	Credit	Balance
07-10-16		Op. Balance			2,498,558.15 Dr.
07-10-16	CV100012	T+2 Bill #1522	2,745,824.30		5,244,382.45 Dr.
10-10-16	CV100016	T+2 Bill # 1550	1,241,236.65		6,485,619.10 Dr.
14-10-16	CV100023	T+2 Bill #1600	2,123,652.72		8,609,271.82 Dr.



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Furthermore, the continued debit balances were also in contravention of Regulation 4.18.1(c) of the Rule Book of Pakistan Stock Exchange (the PSX Rule Book) which requires the Appellant to maintain a collateral amount under its participant account. This collateral account is to be used for instances where outstanding payment has not been received from clients in respect of securities purchased on their behalf and relevant purchase obligation is to be settled.

- (ii) The Appellant made payment to the following clients who had debit balance in contravention of Rule 34 of the Securities Rules. Instances noted are as under:

Mr. Muhammad Anaf s/o Haji Haroon (Ledger code N803)

Date	Vch. No.	Particulars	Debit	Balance
26-08-16		Op.Balance		4,091,163.66 Dr.
26-06-16	PV80110-318	P.CHQ	995,000	5,086,163.66 Dr.

Mr. Mustafa Pyar Ali (Ledger code P567)

Date	Vch. No.	Particulars	Debit	Credit	Balance
10-09-16		Op. Balance			9,239,728.58 Dr.
10-09-16	PV90048-436	P. CHQ	71,000		9,310,728.58 Dr.

Date	Vch.No.	Particulars	Debit	Credit	Balance
10-10-16		Op. Balance			6,568,843.14 Dr.
10-10-16	PV100038-603	P.CHQ	70,000		6,638,843.14 Dr.

Mr. M. Sibtain (Ledger code: P564)

Date	Vch. No.	Particulars	Debit	Credit	Balance
10-09-16		Op.Balance			7,347,535.54 Dr.
10-09-16	PV90048-435	P.CHQ.	80,000		7,427,535.54 Dr.

Date	Vch. No.	Particulars	Debit	Credit	Balance
10-10-16		Op.Balance			8,009,424.44 Dr.



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10-10-16	PV100038-602	P.CHQ.	70,000		8,079,424.44 Dr.
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(iii) In futures market transactions, the Appellant failed to recover mark to market (the MtM) losses from the following clients in form of cash in contravention of Regulation 19.5 of the PSX Rule Book read with Regulation 12.9.3 of the National Clearing Company of Pakistan Limited Regulations, 2015 (the NCCPL Regulations):

Mr. M. Taqi (Ledger code: P561)

Date	Vch. No.	Particulars	Debit	Credit	Balance
17-11-16		Op. Balance			1,218,776.58 Dr.
17-11-16	CV1100444	FTI Difference #343	12,915.00		1,231,691.58 Dr.
18-11-16	CV110047	FTI Difference #349	19,873.70		1,251,565,28 Dr.
21-11-16	CV110050	FTI Difference #354	1,925.00		1,253,490.28 Dr.

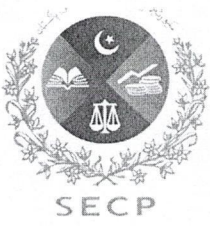
Mr. Jagdesh Kumar s/o Srichand (Ledger code T118)

Date	Vch.No.	Particulars	Debit	Credit	Balance
11-07-16		Op.Balance			9,921.55 Dr.
11-07-16	CV070010	FT1 Difference #12	15,322.5		25,244.05 Dr.
12-07-16	CV070015	FTI Difference #21	19,900		45,144.05 Dr.
13-07-16	CV070018	FTI Difference #30	2,450		47,594.05 Dr.
14-07-16	CV070021	FTI Difference #42	3,875		51,469.05 Dr.

Mr. Ghulam Hussain s/o Long Khan (Ledger code T321)

Date	Vch. No.	Particulars	Debit	Credit	Balance
27-07-16		Op.Balance			117,010.64 Dr.
27-07-16	CV070056	FT2 Difference #11	25,864.24		142,874.88 Dr.
28-07-16	CV070059	FT1 Difference #122	779.96		143,654.84 Dr.
28-07-16	CV070060	FT1 Difference #18	20,431.48		164,086.32 Dr.

It appeared that the Appellant also extended finance to its clients by not collecting MtM losses from its clients in violation of Rule 34 of the Securities Rules.



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(iv) The Appellant also failed to collect margins from the clients for the trades executed in the ready market in violation of Regulation 19.5 of the PSX Rule Book read with Regulation 12.9.3 of the NCCPL Regulations. The instances noted during the Review are as under:

Ms. Zareena Begum w/o A.Karim (Ledger code: U060)

Date	Vch.No.	Particulars	Debit	Credit	Balance
12-08-16		Op-Balance			1,245,548.49 Dr.
12-08-16	CV080032	T+2 Bill #613	848,507.69		2,094,056.18 Dr.
15-08-16	CV080035	T+2 Bill #640	1,834,404.79		3,928,460.97 Dr.
17-08-16	CV080042	T+2 Bill#648	436,614.10		4,365,075.07 Dr.

Mr. Tahir s/o Bashir Ahmed (Ledger code: J332)

Date	Vch. No.	Particulars	Debit	Credit	Balance
18-08-16		Op Balance			468,137.54 Dr.
18-08-16	CV080045	T+2 Bill #718	384,205.67		852,343.21 Dr.
19-08-16	CV080047	T+2 Bill #739	125, 232.42		977,575.63 Dr.

Mr. Noman s/o Abdul Razzak/Shahzia Noman (Ledger code: J301)

Date	Vch.No.	Particulars	Debit	Credit	Balance
04-08-16		Op.Balance			18,800.45 Dr.
04-08-16	CV080009	T+2 Bill #458	223,360.38		242,160.83 Dr.
05-08-16	CV080013	T+2 Bill #491	276,668.89		518,829.72 Dr.

It appeared that the Appellant by providing margins on behalf of its clients extended finance to its clients in violation of Rule 34 of the Rules.

4. In light of the findings of the Review, the Commission served the Show Cause Notice dated 15/06/17 (the SCN) to the Appellant under section 150 of the Securities Act. The Appellant through its Chief Executive was called upon to show cause in writing as to why action should not be taken under section 150 of the Securities Act for contravening various provisions of the regulatory framework mentioned above. The written response of the Appellant was submitted on 23/06/17 and hearing in the matter was

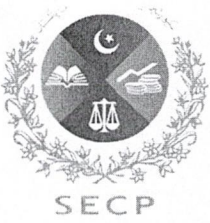


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held on 12/07/17. Mr. Muhammad Hussain, Chief Executive Officer/Director of the Appellant appeared before the Respondent on behalf of the Appellant through video conferencing from the Commission's Karachi Office and made his submissions.

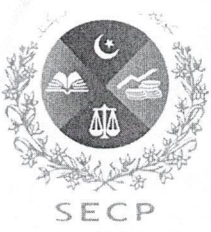
5. The Respondent dissatisfied with the response of the Appellant held that the violations of the regulatory framework committed by the Appellant are established and as per section 150 of the Securities Act, a penalty of Rs. 50 million could be imposed on the Appellant and the Commission could suspend or cancel the license of the Appellant for contravening the provisions of the Act and the rules and regulations made by the Commission under the Act. The Respondent, however, held that since the Review was the first of its kind and given the practical difficulties being faced by the industry participants, therefore, no penalty was being imposed on the Appellant despite the violations. The Appellant, however, was warned by the Respondent to comply with the regulatory framework in letter and spirit as any violations in future may result in suspension or cancellation of its license and imposition of penalties.
6. The Appellant preferred the appeal on the following grounds:
 - (a) The Appellant had used its own resources to facilitate some of its long term clients and the Respondent completely ignored the fact ~~act~~ that developing a strong client relationship requires time and effort. It is unjust to expect from the Appellant to vigorously pursue and collect the outstanding dues from its clients, especially where such clients have a long-term relationship with the Appellant. Furthermore, the Appellant never defaulted in making the required payments to NCCPL and the Appellant can furnish evidence of the payments duly cleared by such clients.
 - (b) Regulation 19.5 of the PSX Rule Book read with Regulation 12.9.3 of the NCCPL Regulations clearly mentions that regardless of the payment of margin by the client to the broker, it is always the obligation of the broker to pay such margin to NCCPL. The Appellant has never defaulted in its obligation of payment to NCCPL which is part of the record and, therefore, has always been compliant with the Regulations.
 - (c) The NCCPL Regulations have set out penalties for one time, second time, and any subsequent instances of defaults if any non-compliance takes place. Therefore, proceedings under section 150 of the Securities Act are not only harsh but extremely unjust.
7. The Respondent rebutted the arguments of the Appellant on the following grounds:



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- (a) The Commission always encourages its licensees to keep long-term relationships with their respective clients, however, such relationship should not be at the cost of violating any provisions of relevant laws. The licensee is expected to keep business arrangement with the client within the boundaries of the law. Rule 34 of the Securities Rules prohibits the Appellant from extending financing through other than regulated modes of financing. The Appellant extended financing to its clients by way of executing their trades despite non-availability of sufficient funds in clients' accounts in contravention of Rule 34 of the Securities Rules.
- (b) It is always the obligation of the broker to pay margin to NCCPL regardless of the payment of such margin by the client to the broker, however, the broker is expected to comply with the provisions of Regulation 19.5 of the PSX Rule Book and Regulation 12.9.3 of the NCCPL Regulations. The provisions of the foregoing Regulation make it incumbent upon the Appellant to take all margins and MtM losses from their respective clients in accordance with total margin requirements as prescribed by NCCPL. In the instant case, the Appellant failed to recover MtM losses from clients in Future Market transactions and also did not collect margins from the clients in contravention of Regulation 19.5 of the PSX Rule Book read with Regulation 12.9.3 of the NCCPL Regulations.
- (c) The Respondent was empowered to initiate proceedings and impose penalty in terms of section 150 of the Securities Act for non-compliance with the regulatory obligations, however, a lenient view was taken and no penalty was imposed and only a warning was given to the Appellant to comply with the regulatory framework in letter in spirit in future. Therefore, the Appellant's contention that the Impugned Order is harsh is totally unjustified.

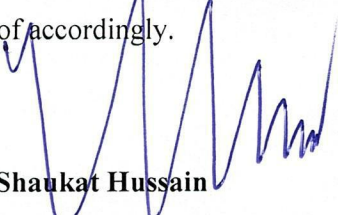
8. We have heard the parties i.e. the Appellant and Respondent. We are of the view that while it is important to have a strong client relationship, it does not justify violation of the relevant provisions of the law i.e. Rule 34 of the Securities Rules which the Appellant violated by extending unlawful financing to clients and executing trades in their accounts despite non-availability of sufficient funds as well as by making payments to clients despite existence of debit balance. Moreover, the continued debit balances were also in contravention of Regulation 4.18.1(c) of the PSX Rule Book which required the Appellant to maintain a collateral account under its participant account in the Central Depository System which was to be used where outstanding payment had not been received from clients in respect of securities purchased on their behalf and relevant purchase obligations had to be settled. Furthermore, the Appellant failed to recover MtM losses from its clients and also did not collect margins in contravention of Regulation 19.5 of the

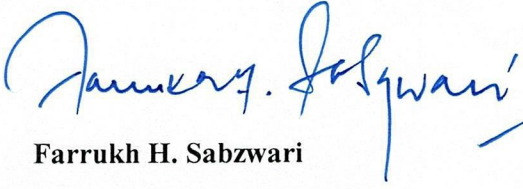


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PSX Rule Book read with Regulation 12.9.3 of the NCCPL Regulations. The Appellant has not come with any cogent reasons or given any satisfactory explanation as to why the said violations took place. We are of the view, therefore, that the Appellant has violated the regulatory framework. The Respondent, however, has already taken a lenient view by giving a warning and not imposing a penalty.

9. In view of the foregoing, the Impugned Order is upheld with no order as to cost. The Appeal is disposed of accordingly.


Shaukat Hussain
Commissioner (CCD, Insurance)


Farrukh H. Sabzwari
Commissioner (SCD, AML)

Announced on:

28 FEB 2020