



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matters of

Appeal No. 2, 3, 4 and 5 of 2015

Mr. Furqan Aslam

Mr. Muhammad Munnaf

Mr. Muhammad Amin

Mr. Muhammad Ashfaq

....

Appellants

Versus

Mr. Abid Hussain Director/HOD (MSSID),
Securities and Exchange Commission of Pakistan

....

Respondent

Date of hearing

06-05-15

ORDER

Present:

For the Appellants:

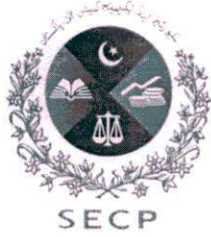
Mr. Mansoor Ali Ghanghro, Advocate

For the Respondents:

Mr. Amir Saleem, Joint Director (MSSID)

Mr. Mirza Shoaib Baig, Deputy Director (MSSID)

Page 1

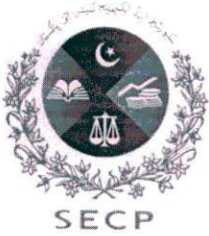


Securities and Exchange Commission of Pakistan

1. This order shall dispose of Appeal No. 2, 3, 4 and 5 of 2015 filed under section 33 of the Securities and Exchange Commission of Pakistan (the “Commission”) Act, 1997 (the “SECP Act”) against the Orders dated 12-01-2015 and 15-01-2015 (the “Impugned Orders”) passed by the Respondent as similar question of law and fact is involved in these appeals.
2. The facts of the instant matter are that perusal of KATS data of the Karachi Stock Exchange Limited (“KSE”) revealed that three individual clients of Surmawala Securities (Private) Limited (“Brokerage House”), which is a member of KSE and is registered with the Commission under the Brokers and Agents Registration Rules, 2001, (“the Broker Rules”), namely, Mr. Muhammad Munaf (“Appellant No. 2”), Mr. Muhammad Amin (“Appellant No. 3”) and Mr. Muhammad Ashfaq (“Appellant No. 4”) in connivance with Mr. Furqan Aslam, (“Appellant No.1”) Karachi Automated Trading System (“KATS”) Operator of Arif Habib Limited (“AHL”), traded extensively in the shares of various companies in ready market during the following time period:

Sr.#	Appellant	Time Period
1	Appellant No. 2	January 2011 – April 2014
2	Appellant No. 4	December 2010 – April 2014
3	Appellant No. 3	January 2011 – April 2014

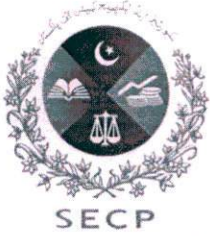
3. Analysis of trading activities of Appellant No. 2, Appellant No. 3 and Appellant No. 4 (“Group”) revealed that their trading synchronized significantly with trading of various clients of AHL. It was also observed that a considerable portion of day trading conducted by the clients of the Brokerage House directly matched with the trades of the clients of AHL, in which the said individuals squared up their positions by day end and earned a significant amount of profit as follows:



Securities and Exchange Commission of Pakistan

Appellant	Profit
Appellant No. 2	2,576,533
Appellant No. 4	5,333,257
Appellant No. 3	51,378

- Day Trading transactions, in which trading of the Group matched with the clients of AHL, were elaborated as Annexures A, B and C of the Impugned Orders.
- The Brokerage House was requested vide letter dated October 04, 2013 to provide certain information regarding its clients Appellant No.4, bearing client code "1429" and Appellant No.2 bearing client code "301", respectively. Further the Brokerage House was requested vide letter dated March 05, 2014 to provide certain information regarding its client, Appellant No.3, bearing client codes "1426" and "1414". The requisite information comprised of the complete standard accounting opening form ("SAOF"), CDC Sub Account Forms, Trading Statements, Financial Ledgers, copies of cheques and / or any other instruments used for receipts / payments, statements showing receipts/payments and telephonic recordings for placement of orders. The said information was received from the Brokerage House through various correspondences vide letters dated October 11, 2013, October 23, 2013, November 07, 2013, March 12, 2014 and March 14, 2014.
- Further, information regarding name / description of individuals who received / executed the clients orders from the terminals 'MEMO5010, MEMO5009, MEMO5005, FIXO5001 and MEMO5004' held with AHL was sought from AHL vide letter dated October 04, 2013 which was received vide letter dated October 11, 2013. AHL in the aforesaid letter informed that Appellant No.1 is responsible to receive and execute the orders of the clients of AHL from MEMO5010. This is the same terminal from which majority of trades of the Group were matched with the clients of AHL.
- Moreover, banking information was sought from the State Bank of Pakistan ("SBP") with reference to the instruments / cheques and receipts of the Group and Appellant No.1, which



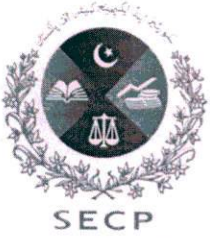
Securities and Exchange Commission of Pakistan

included the bank SAOFs and Bank Statements for the period from January 01, 2011 to December 31, 2013 and copies of instruments through which payments/transfers were made from the accounts of the Group and Appellant No. 1. The banking information was received from SBP vide letters dated November 27, 2013 and January 01, 2014.

8. It was observed from the SAOF of Appellant No.4 that the Appellant No.3 was his brother and he has been nominated to take over the account in the event of death of Appellant No.4. Their relationship was also verified through their CNICs. Moreover, upon analysis of the bank statements it was observed that various payments were also made to and from the bank accounts of the Group frequently as mentioned below:

Appellant	Account Number	Bank
Appellant No. 4	00357900070503	Habib Bank Limited
Appellant No. 4	0015-1003272145/01013187	Bank Al-Falah Limited
Appellant No. 3	00357900013403	Habib Bank Limited
Appellant No. 2	1012-0071-001172-011	Bank Al Habib

9. It was further observed that cheque number 856379 amounting to Rs.150,000 was credited to the Appellant No.1 account number 1-2-1-20610-714-111828 on March 12, 2012 which was drawn from the account of Appellant No.4, bearing number 00357900070503. Furthermore, cheque number 7055333 amounting to Rs.113,000 was credited to Appellant No.1 account number 1-2-1-20610-714-111828 on March 18, 2013 which was drawn from the account of Appellant No.3, bearing number 00357900013403. Therefore, *prima facie*, suspicion was raised that Appellant No.1 has been providing material information pertaining to the orders of the clients of AHL, which was available to him by virtue of his position as a KATS Operator at AHL. Therefore, separate Show Cause Notices ("SCNs") were issued to the Appellants with advice to submit response within fifteen days.



Securities and Exchange Commission of Pakistan

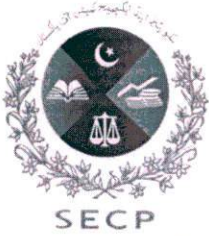
10. The response of Appellant No. 1 received against the SCN refuted the allegations levied by the Respondent and stated that during the period as mentioned in the SCN he was only responsible for execution of orders of the clients through one terminal bearing number, MEMO5010. Further, a number of transactions which were mentioned in the SCN from terminal MEMO5010 related to period in which he was not responsible to receive and / or execute the trades as he was on leaves to perform Umrah. The Respondent emphasized that any transaction executed from any of the brokerage house, if matched with his KATS terminal, can only be attributed as normal trading, as no one is aware as to who is the counterparty on any particular trade.
11. The reply of the SCNs from the Group's legal counsel was received on June 05, 2014, in which the allegations levied by the Respondent were denied. The legal counsel stated that his clients should not be categorized as a Group as the Appellants were never involved in trading activities together. Brief of contentions made are as follows:
- i) The Respondent has not considered the total volume of each share within the Brokerage House and in the market.
 - ii) The Respondent has not considered the total volume executed by AHL terminals.
 - iii) For calculation of net profit the Respondent did not consider the percentage of quantity matched with AHL clients.
 - iv) The Respondent did not consider those trades which were executed other than the trades mentioned in the said SCN.
 - v) The Respondent did not consider the fact as to how a single individual was executing the orders from five terminals.
12. Subsequently, hearings in the matter were fixed on June 05, 2014 and December 30, 2014. The hearings were attended by Legal Counsel of the Appellants who submitted the same stance, during both the hearings, which was taken in the letter dated June 05, 2014 in reply to the SCNs. The legal Counsel was informed during the first hearing that the Respondent



Securities and Exchange Commission of Pakistan

termed the clients of the Brokerage House as a Group due to their banking transactions with each other and matching of their individual trades with the trades of the clients of AHL which were being executed by Appellant No.1. Therefore, the Legal Counsel requested for more time to submit a proper response to this point raised by the Respondent. The Respondent received letter from the legal counsel dated October 15, 2014, in which it was stated that the fund transferred to and from the bank accounts of the Group were payments against the loans which were given to each other by the Group and Appellant No.1. However, in the letter dated October 15, 2014, no evidence was provided to the Respondent regarding the purpose of loan between the Group and Appellant No.1, therefore, a final opportunity of hearing was provided on December 30, 2014. The legal counsel, however, again failed to provide any document during the hearing substantiating his stance but he promised to provide the same within two days. The legal counsel, vide letter dated December 31, 2014 submitted copies of certain documents which include purchase bills of certain items including computers, computer accessories and batteries from various vendors and payment of zakat to different 'madrisas' and a hospital bill.

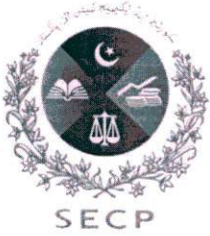
13. While passing the Impugned Orders, the facts of the case and the written submissions by the Appellants during the course of the hearings were considered and it was concluded that Appellant No.4 is brother of Appellant No. 3 and they are maternal uncles of Appellant No.1. The Appellant No.2 has very good relationship with Appellant No.3 and Appellant No. 4, who are the clients of the Brokerage House, as is evident from the details of banking transactions with each other. The Respondent while issuing the SCNs has only taken a sample of trades conducted by the Group, in which the trades have been squared up and maximum matching has been conducted. Further, the only relevant terminal is terminal numbered MEMO5010 from which Appellant No.1 executed orders of AHL clients and from which maximum matching with Group was done and total trades conducted by the AHL terminals are not relevant to this case. It has been observed from the details submitted by the legal counsel that the documents have no relevance with the amount of cheques given to each



Securities and Exchange Commission of Pakistan

other and the payments do not reflect that they were actually made for these transactions therefore the same cannot be accepted as evidence against the banking transactions between the Group. Further the documentary evidence available with the Respondent clearly established that in majority of the instances trades of the Group matched close to 100% with the trades executed by Appellant No.1 for client of AHL which is not possible without prior arrangement / information. Moreover, certain payments were made by the Group to Appellant No.1. Appellant No.2 is director of the Brokerage House through which the Group executed their trades.

14. Respondent was of the view that it is evident that the Appellants indulged in 'Insider Trading' based on the 'Inside Information' available with the Group due to the privileged position held by Appellant No.1.
15. Trading conducted on KATS is undisclosed and as thousands of market participants are placing orders simultaneously, no one can choose to have a certain Group or clients of a single Brokerage House to be the counterparty to his trades frequently. However, in the instant case, it was observed that most of times the trading conducted by the Group matched with the trading of clients of AHL close to 100%. Further, the Group often bought / sold majority of his shares from / to those clients of AHL whose trades were executed by Appellant No.1.
16. It was unjust to the clients of AHL, whose confidential trading information was passed on to certain individuals who used that information to trade in the shares before the orders of clients of AHL were executed. Thus, the Group indulged in 'Insider Trading' which is a grave offence and can damage investor's confidence. In this instant case, interest of a vast base of the clients of AHL was hurt as when their buy orders were executed, the Group had already purchased the respective shares pushing the price of the shares slightly above. Therefore, the orders of the clients of AHL were executed at a higher price and the

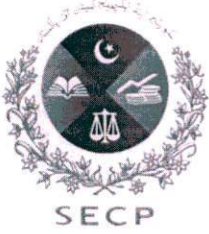


Securities and Exchange Commission of Pakistan

counterparty was often the Group. Moreover, the interest of the clients of AHL was hurt as the orders of Group were executed prior to the execution of orders of the clients of AHL, slightly decreasing the price of the scrip, from where the Group squared up the positions. It was observed that the movement in the price of the shares was not substantial; however, keeping in view the amount of transactions executed and the number of shares involved the amount of loss to the clients of AHL in monetary terms is substantial. The amount of loss incurred to the clients of AHL was in turn earned by the group as the stock market is a zero sum game. Further, non-compliance of the applicable Rules and Regulations was observed, as the Appellants did not act professionally in the capital market by trading on fundamentals or technical analysis before making an investment, rather he relied on 'Inside Information' to make significant gains.

17. The two essential ingredients of establishing an offence of insider trading are that the person dealing in a share should be an 'insider' as defined in Section 15 C of the Securities & Exchange Ordinance, 1969 ("Ordinance") and the information used by him/her must fulfill the criteria laid down in Section 15 B of the Ordinance. As for the first ingredient, it transpired from the facts that the Group obtained 'Inside Information' from the KATS Operator of AHL, through unlawful means, who possessed information about the pending orders of the clients of AHL. The Group, being privy to the inside information was able to utilize this information, resulting in the purchase of shares at lower market price and selling at a higher price to make gains. The facts as stated above fully establish that the Appellants fall under the category of an 'Insider' as defined in Section 15 C (1) (h) of the Ordinance.

18. The second ingredient of insider trading offence under the Ordinance is outlined in Section 15B (1) (a) of the Ordinance which states that inside information should be in relation to information which has not been made public concerning listed securities, if it were made public, would likely to have an effect on the prices of those listed securities. Accordingly, the information regarding the orders of the clients of AHL was material inside information.



Securities and Exchange Commission of Pakistan

whose revelation to the general public would have led to a material impact in the price of the various shares as well as volume of the shares, therefore, is price sensitive.

19. Based on the number of transactions and their percentage of matching, it was established that the Group, being an Insider, used the information of the pending orders of the clients of AHL passed on by Appellant No.1. Such information was available to Appellant No.1 owing to his official capacity as KATS Operator of AHL, on the basis on which the Group traded extensively, realizing significant profit and shared a portion of it with Appellant No.1.

20. Based on the above facts, it was concluded that the Appellants have contravened with the provisions of Section 15A (2) (a) of the Ordinance.

21. Therefore, the Appellants in exercise of powers under Section 15E (3) of the Ordinance through the Impugned Orders were penalized as follows:

A. Appellant No.1:

A penalty of Rs. 500,000/- (Rupees Five Hundred Thousand Only) for the contravention of the provisions of sub-section (1) of the Section 15A with a further direction to ensure full compliance of all rules, regulations and directives of the Commission in the future for avoiding any punitive action under the law.

B. Appellant No.2:

A penalty of Rs. 2,576,533/- (Rupees two million five hundred seventy six thousand five hundred and thirty three only) which is equivalent to the gain generated through unfair trading practice with a further direction to ensure full compliance of all rules, regulations and directives of the Commission in the future for avoiding any punitive action under the law.

C. Appellant No.3:

A penalty of Rs. 51,378/- (Rupees fifty one thousand three hundred and seventy eight only) which is equivalent to the gain generated through unfair trading practice with a



Securities and Exchange Commission of Pakistan

further direction to ensure full compliance of all rules, regulations and directives of the Commission in the future for avoiding any punitive action under the law.

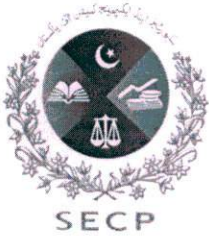
D. Appellant No.4:

A penalty of Rs. 5,333,257/- (Rupees five million three hundred thirty three thousand two hundred and fifty seven only) which is equivalent to the gain generated through unfair trading practice with a further direction to ensure full compliance of all rules, regulations and directives of the Commission in the future for avoiding any punitive action under the law.

22. The Appellants aggrieved of the Impugned Orders have preferred the instant Appeals on the following grounds:

Appellant No. 1

- a. The Impugned Order is contrary to law and facts, is not based on principles governing the subject.
- b. As per Article 4 of the Constitution, the Appellants have the inalienable right to be treated in accordance with the laws of Pakistan. Section 24A of the General Clauses Act, 1897 grants to the Appellants the inalienable right to be treated fairly, justly and any order passed by the Respondent in exercise of any statutory authority has to be reasonable, showing application of mind. It is incumbent on public functionaries whilst making an order to apply their 'mind' and give detailed reasons, i.e. the public functionaries are to pass a speaking order, which the Respondent failed to do so in this case. None of the arguments raised and facts established by the Appellants through documentary evidence in his written and oral submissions were taken into consideration by the learned Respondent, whilst passing the Impugned Order.
- c. The Respondent initiated the subject 'suo moto' proceedings under Section 29(1) of the SECP Act, 1997 whereby the Respondent is purportedly empowered to conduct



Securities and Exchange Commission of Pakistan

investigations in respect of any matter that is an offence under the Act “or any other law administered by the Commission”. The Respondent, as such, initiated the subject ‘suo moto’ proceedings under Section 15E of the Securities and Exchange Ordinance, 1969. However, the words “ or any other law administered by the Commission” in Section 29(1) of the SECP Act, 1997 were inserted through Finance Act, 2007, vires of which was successfully challenged before the Honorable Supreme Court of Pakistan in C.P. No. 58 of 2010. In view of the Judgment in C.P. No. 58 of 2010 and the observations made therein (regarding the validity and legality of the Finance Act, 2007), which observations are reiterated and restated herein and the same may be deemed to form be an integral part hereof, and as such it is submitted that the subject *suo moto* proceedings were unlawfully initiated and are not mandated by law.

- d. The learned Respondent in the Impugned Order has failed to establish a case against the Appellant for acting in violation of Section 15A (2)(a) of the Ordinance.
- e. The learned Respondent has failed to establish that the Appellant disclosed “inside information/confidential information” and make significant gains thereof.
- f. The learned Respondent has failed to establish the requisite mental intent.
- g. Even otherwise it is obvious and apparent from a scrutiny of the documentation relied upon by the Respondent and the additional documents and record submitted by the Appellant that the subject transactions did not take place through the KATS terminal MEM05010 operated by the Appellant.
- h. The transactions at the Appellant’s KATS terminal MEM05010 nor transactions undertaken by the Appellant for any of his clients match in terms of date and time with the trades/transactions as stated in para 5 and Annexure A,B and C of the Show Cause Notice.
- i. The transactions stated in stated in para 5 and Annexure A, B and C of the Show Cause are all in relation to liquid shares and, as such, it stands to reason that these transactions would be executed with counter parties on competitive prices.

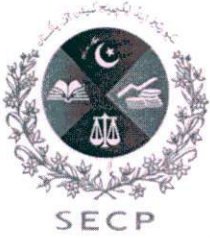


Securities and Exchange Commission of Pakistan

- j. If there had there been any “front running”, then it would have been in the shares in which the Appellant had large orders rather than in shares for which there were minimal quantity of shares.
- k. The transactions at KATS are executed on anonymous basis, meaning the counter party cannot be known before and even after the transaction is executed. If we assume transactions are not anonymously executed (which is not the case), it would be impossible to execute transactions with certainty with a particular counter party, particularly in highly liquid shares.

Appellants No. 2, 3 and 4 (Group)

- a. The Impugned Orders are contrary to law and facts and is not based on principles governing the subject.
- b. As per Article 4 of the Constitution, the Appellants have the inalienable right to be treated in accordance with the laws of Pakistan. Section 24A of the General Clauses Act, 1897 grant inalienable right to the Appellants to be treated fairly, justly and any order passed by the Respondent in exercise of any statutory authority has to be reasonable, showing application of mind. It is incumbent on public functionaries whilst making an order to apply their ‘mind’ and give detailed reasons, i.e. the public functionaries are to pass a speaking order, which the Respondent failed to do so in this case. None of the arguments raised and facts established by the Appellants through documentary evidence in his written and oral submissions were taken into consideration by the learned Respondent, whilst passing the Impugned Orders.
- c. The Respondent initiated the subject ‘suo moto’ proceedings under Section 29(1) of the SECP Act, 1997 whereby the Respondent is purportedly empowered to conduct investigations in respect of any matter that is an offence under the Act “or any other law administered by the Commission”. The Respondent, as such, initiated the subject ‘suo moto’ proceedings under Section 15E of the Securities and Exchange



Securities and Exchange Commission of Pakistan

Ordinance, 1969. However, the words “or any other law administered by the Commission” in Section 29(1) of the SECP Act, 1997 were inserted through Finance Act, 2007, vires of which was successfully challenged before the Honorable Supreme Court of Pakistan in C.P. No. 58 of 2010. In view of the Judgment in C.P. No. 58 of 2010 and the observations made therein (regarding the validity and legality of the Finance Act, 2007), which observations are reiterated and restated herein and the same may be deemed to form be an integral part hereof, and as such it is submitted that the subject suo moto proceedings were unlawfully initiated and are not mandated by law.

- d. The learned Respondent in the Impugned Orders has failed to establish a case against the Appellants for acting in violation of Section 15A (2)(a) of the Ordinance.
- e. The learned Respondent has failed to establish that the Appellants disclosed “inside information/confidential information” and make significant gains thereof. That in breach of principles of natural justice and fairness, despite repeated requests, no data concerning the trades by the Appellants which allegedly match the trades of other traders and brokers (who allegedly were provided ‘insider information’), was provided to the Appellants.
- f. That the learned Respondent has failed to establish the requisite mental intent.
- g. Even otherwise it is obvious and apparent from a scrutiny of the documentation relied upon by the Respondent and the additional documents and record submitted by the Appellants that the subject transactions did not take place through the KATS terminal MEM05010 operated by Appellant No.1.
- h. The banking transactions between individuals, who are related by blood, in accordance with applicable law, is not *prima facie* evidence of acting in contravention of the Ordinance.
- i. The transactions undertaken by the Appellants do not match in terms of date and time with the trades/transactions as stated in the Show Cause Notice.



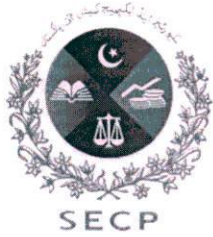
Securities and Exchange Commission of Pakistan

- j. The transactions stated in the SCNs are all in relation to liquid shares and, as such, it stands to reason that these transactions would be executed with counter parties on competitive prices.
- k. Had there been any “front running”, then it would have been in the shares in which the Appellants had large orders rather than in shares for which there were minimal quantity of shares.
- l. The transactions at KATS are executed on anonymous basis, meaning the counter party cannot be known before and even after the transaction is executed. Further, for the sake of academic debate, if we assume transactions are not anonymously executed (which is not the case), it would be impossible to execute transactions with certainty with a particular counter party, particularly in highly liquid shares.

23. The Respondent has refuted the grounds of Appeals stated by the Appellants as follows:

Appellant No. 1

- a. The Impugned Order was passed by the Respondent, taking into account ‘Inside Information’ which was passed on by the Appellant ‘Insider’ to the Group who have good relationship with the Appellant No. 1 and Appellant No. 3 and Appellant No. 4 are his maternal uncles and who traded on the basis of the ‘Inside Information’ and made unlawful gains. The unlawful gain generated by the Group constituted as a loss to the clients of AHL as stock market is a zero sum game.
- b. The Impugned Order is a speaking order and has been passed after careful due diligence by the relevant authority and the Appellant was given sufficient time to prove his innocence and credibility of his trading in the two hearings which were conducted and sufficient time was given to submit written response and relevant documents. However, the Appellant was not able to convince the Respondent through its written replies and during the hearings. The Order addresses the



Securities and Exchange Commission of Pakistan

response given by the Appellant and discusses all the documents submitted in defense.

- c. The Commission being an apex regulator of the capital market undertakes suo moto proceedings keeping in view the interest of the investors at large. In the instant case proceedings were initiated against the Appellant based on record available with the Respondent to protect the interest of investors at large. No adverse decision has yet been made by any court against the amendments made in the Ordinance through finance bill.
- d. Section 15A (2)(a) states that Insider Trading shall include (a) an insider person transacting any deal, directly or indirectly using inside information involving listed securities to which the inside information pertains, or using others to transact such deals. In this instant case the Appellant who is the KATS Operator of AHL possessed the information of pending orders of the clients of AHL which is considered an 'Inside Information' which he passed on to the Group which transacted based on the information and made gain, which was shared with the Appellant, who is classified as an 'Insider'.
- e. The Appellant is trying to mislead the Appellant Bench. The Appellant disclosed 'Inside Information' to the Group who in turn traded to make unlawful financial gain. Further the Appellant was provided the Annexures with the SCN.
- f. It is pertinent to note that matching of trade transactions by the Group with the orders placed by the Appellant for clients at AHL, stopped, after the issuance of the SCN, which is also a sign of malpractice that was deliberately being conducted by the Group and the Appellant. Further, if matching of trades of the Group with the trades of the clients of the Appellant is a coincidence, then the trades of other clients of the brokerage house should also have matched with the trades of the clients of the Appellant in the same manner and extent.
- g. The transactions executed were wholly or partially through the terminal 'MEMO5010' as per the record procured from the market surveillance wing.



Securities and Exchange Commission of Pakistan

- h. The matched transactions were provided to Appellant with the SCN as well as with the Impugned Order.
- i. The statement of the Appellant is partly incorrect as the sell orders of the Group were executed prior to the execution of orders of the clients of AHL, slightly decreasing the price of the scrip, from where the Group squared up the positions. In other cases the buy orders of the Group were executed before the buy orders of the clients of AHL which slightly increased the price of the share, from where the Group squared up the position. It was observed that the movement in the price of the shares was not substantial; however, keeping in view the amount of transactions executed and the number of shares involved the amount of loss to the clients of AHL in monetary terms is substantial.
- j. There is no relationship of large or small orders with the front running.
- k. The statement of the Appellant is correct and it is also the contention of the Respondent that trading conducted on KATS is undisclosed and as thousands of market participants are placing orders simultaneously, no one can choose to have a certain Group or clients of a single Brokerage House to be the counterparty to his trades frequently. However, in the instant case, it was observed that most of times the trading conducted by the Group matched with the trading of clients of AHL close to 100%. It is also pertinent to mention that the Group often bought / sold majority of his shares from / to those clients of AHL whose trades were executed by the Appellant.

Grounds of Appellants No. 2, 3 and 4

- a. The Impugned Orders were passed, taking into account 'Inside Information' which was passed on by Appellant No. 1 'Insider' to the Appellant No. 3 and Appellant No. 4 who is the relative of Appellant No. 1 and who along with Appellant No.2 traded on the basis of the 'Inside Information' and made unlawful gains. The



Securities and Exchange Commission of Pakistan

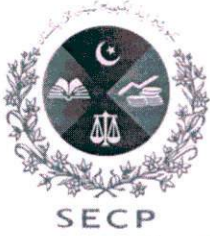
unlawful gain generated by the Group constituted as a loss to the clients of AHL as stock market is a zero sum game.

- b. The Impugned Orders are speaking orders and have been passed after careful due diligence by the relevant authority and the Appellants were given sufficient time to prove their innocence and credibility of trading in the two hearings which were conducted and sufficient time was given to submit written response and relevant documents. However, the Appellants were not able to convince the Respondent through its written replies and during the hearings. The Orders address the response given by the Appellants and discusses all the documents submitted in defense.
- c. It is submitted that the Commission being an apex regulator of the capital market undertakes suo moto proceedings keeping in view the interest of the investors at large. In the instant case proceedings were initiated against the Appellants based on record available with the Respondent to protect the interest of investors at large. No adverse decision has yet been made by any court against the amendments made in the Act through finance bill.
- d. Section 15A (2)(a) states that Insider Trading shall include (a) an insider person transacting any deal, directly or indirectly using inside information involving listed securities to which the inside information pertains, or using others to transact such deals. In this instant case Appellant No.1 who is the KATS Operator of AHL possessed the information of pending orders of the clients of AHL which is considered an 'Inside Information' which he passed on to the Group which transacted based on the information and made gain, which was shared with Appellant No.1, who is classified as an 'Insider'.
- e. The Appellants are trying to mislead the Appellant Bench. The Appellant No.1 disclosed 'Inside Information' to the Appellants who in turn traded to make unlawful financial gain. It has never been alleged that the Appellants disclosed 'Inside Information'. Further the Appellants were provided the Annexures with the SCN.



Securities and Exchange Commission of Pakistan

- f. It is pertinent to note that matching of trade transactions by the Group with the orders placed by Appellant No.1 for clients at AHL, stopped, after the issuance of the SCN, which is also a sign of malpractice that was deliberately being conducted by the Group and Appellant No.1. Further, if matching of trades of the Group with the trades of the clients of Appellant No.1 is a coincidence, then the trades of other clients of the brokerage house should also have matched with the trades of the clients of Appellant No.1 in the same manner and extent.
- g. The transactions were executed wholly or partially through the terminal 'MEMO5010' as per the record procured from the market surveillance wing.
- h. The banking transactions include the transactions between the Group and the Appellant No.1. The Appellants could not provide any plausible evidence of such transactions. It is pertinent to mention that the Appellants have provided a double standard statement. On one side Appellants have stated that monetary transactions of the Group cannot be taken into account as they are blood relatives and such transactions exist in blood relative. On the other hand Appellants state that sharing trading data between the blood relatives do not exist as the blood relative do not shares their trading data with each other and they keep such data confidential.
- i. The matched transactions were provided to the Appellants with the SCN as well as with the Impugned Orders.
- j. The statement of the Appellants is partly incorrect as the sell orders of the Group were executed prior to the execution of orders of the clients of AHL, slightly decreasing the price of the scrip, from where the Group squared up the positions. In other cases the buy orders of the Group were executed before the buy orders of the clients of AHL which slightly increased the price of the share, from where the Group squared up the position. It was observed that the movement in the price of the shares was not substantial; however, keeping in view the amount of transactions executed and the number of shares involved the amount of loss to the clients of AHL in monetary terms is substantial.



Securities and Exchange Commission of Pakistan

- k. There is no relationship of large or small orders with the front running.
- l. The statement of the Appellants is correct and it is also the contention of the Respondent that trading conducted on KATS is undisclosed and as thousands of market participants are placing orders simultaneously, no one can choose to have a certain Group or clients of a single Brokerage House to be the counterparty to his trades frequently. However, in the instant case, it was observed that most of times the trading conducted by the group matched with the trading of clients of AHL close to 100%. It is also pertinent to mention that the Group often bought / sold majority of shares from / to those clients of AHL whose trades were executed by Appellant No. 1.
26. We have heard the learned Counsel for the Appellants and the representatives of the Respondent with our utmost attention and perused the record very carefully. Before parting with the order in the instant Appeals we would like to deliberate upon essential grounds of the Appeals as follows:
- i. The contention of the Appellants that the Impugned Orders have been passed without proper reasoning and without considering the written and oral submissions which is in violation of the principles enshrined in the Constitution of the Islamic Republic of Pakistan, 1973 and Section 24-A of the General Clauses Act, 1897 has been reviewed. We have perused the Impugned Orders and the reasoning made therein. We have also gone through the record of the instant Appeals which is based on circumstantial evidence reflecting thereof the contravention made by the Appellants. The principle laid down in Section 24-A of the General Clauses Act, 1897 has been interpreted by the higher courts in various judgments, the Sindh High Court in the case cited as 2009 CLD 1098 has held that “all administrative and quasi-judicial officers must pass speaking orders i.e. the order must state the reason for its conclusion.” In our view the Impugned Orders are well reasoned and



Securities and Exchange Commission of Pakistan

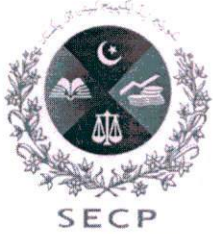
speaking which are not against the principle laid down in section 24-A of the General Clauses Act, 1897.

- ii. The ground regarding insertion through finance act needs to be clarified. The principle referred to by the Appellants in C.P. No. 58 of 2010 is confined to the facts and nature of any such case being challenged before the Honorable Supreme Court. The Honorable Supreme Court while deciding the referred constitutional petition restricted the application of the Judgment to the facts of the case. Reliance is placed on the case law cited as PLD 2011 Supreme Court 213. Relevant extract of the case law is as under:

“The learned Attorney-General for Pakistan, who appeared in response to the notice issued to him in terms of Order XXVIIA, Rule 1, C.P.C. submitted that in such eventuality the danger was that the other legislation carried out under the Finance Act might be affected by such a declaration, therefore, restraint ought to be exercised. As for the fear expressed by the learned Attorney-General, suffice it to say that no other provision either of the Act of 1974 or of any other law amended by a Finance Act having been challenged by anyone before us, this judgment will be confined to the issue involved in the present case, namely, the unconstitutionality of the amendment of section 11(3)(d) of the Act of 1974 brought about by the Finance Act, 2007.”

Underlined for emphasis

- iii. The objections raised by the Appellants on factual grounds regarding the transactions have been well addressed in the Impugned Orders and similarly does not require any further deliberation by this Bench. The matching of transactions of the Group with the clients of AHL in connivance with Appellant No.1 is evident.



Securities and Exchange Commission of Pakistan

27. The conclusion of the above discussion is that the Impugned Orders passed by the Respondent are well discussed and well-reasoned which satisfies the requirements of Section 24-A of the General Clauses Act, 1897. The Appellants were given ample opportunity to prove their innocence; however, the Appellants were unable to prove that the transactions did not contravene the mandatory provisions of the Ordinance.

27. In view of the foregoing, this Bench does not find any reason to interfere with the Impugned Orders in exercise of its powers under Section 33 of the SECP Act, 1997. The Appeals are dismissed.

28. Parties to bear their cost.

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

(**Zafar Abdullah**)
Commissioner (SCD)

Announced on: 20 AUG 2015