



Securities and Exchange Commission of Pakistan

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Securities Market Division
Public Offering and Regulated Persons Department

No. 1(29)SMD/LCID/2015

June 02, 2016

Mr. Asad Abdullah, (i) Director, The Searle Company Limited, First Floor, NIC Building, Abbasi Shaheed Road, Karachi (ii) Director, IBL Unisys (Pvt.) Limited, Level 5, Baharia Complex-II, M.T. Khan Road, Karachi	Mr. Rashid Abdullah, (i) Chief Executive, The Searle Company Limited, First Floor, NIC Building, Abbasi Shaheed Road, Karachi (ii) Director, IBL Unisys (Pvt.) Limited, Level 5, Baharia Complex-II, M.T. Khan Road, Karachi
Syed Naseem Ahmed, (i) Director, The Searle Company Limited, First Floor, NIC Building, Abbasi Shaheed Road, Karachi (ii) Director, IBL Unisys (Pvt.) Limited, Level 5, Baharia Complex-II, M.T. Khan Road, Karachi	Mr. Zubair Razzak Pawala, (i) Director, The Searle Company Limited, First Floor, NIC Building, Abbasi Shaheed Road, Karachi (ii) Director, IBL Unisys (Pvt.) Limited, Level 5, Baharia Complex-II, M.T. Khan Road, Karachi


IBL Unisys (Pvt.) Limited,
Through Chief Executive,
Level 5, Baharia Complex-II,
M.T. Khan Road,
Karachi

Subject: Order in respect of Show Cause Notice dated February 3, 2016 Bearing Number No. 1(29)SMD/PRPD/2016

Dear Sir,

Please find enclosed herewith a copy of order in the title matter for your record and necessary action.

Yours truly,


Muhammad Farooq
Additional Director (PRPD)

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Before the Commissioner (SMD)

In the matter of Show Cause Notice issued under Section 15E and Section 22 of the Securities and Exchange Ordinance, 1969, to IBL Unisys (Pvt.) Limited and others

Date of Hearing:	April 7, 2016,
Present at Hearing:	
Representing the Respondents	(i) Mr. Mikael Azmat Rahim, Senior Associate, Mohsin Tayebaly and Company (ii) Mr. Riawan Ahmed, G.M. Finance, IBL Unisys (Pvt.) Limited
Assisting the Commissioner (SMD)	(i) Mr. Nasir Askar, Director, (PRPD) (ii) Mr. Muhammad Farooq, Additional Director, (PRPD-SMD) (iii) Ms. Najia Ubaid, Joint Director (SSED-SMD) (iv) Ms. Toba Akram, Assistant Director (SSED-SMD)

ORDER

This order shall dispose of the proceedings initiated through a Show Cause Notice No. 1(29)SMD/LCID/2015 dated February 03, 2016 ("Notice") by the Securities and Exchange Commission of Pakistan ("the Commission") against the following persons hereinafter collectively called **Respondents:-**

Name	Description	Notice served for alleged violation of
IBL Unisys (Pvt.) Limited, (Respondent-I)	Traded in the shares of the Searle Company Limited (Searle Company) allegedly on the basis of inside information.	Section 15 A of the Securities and Exchange Ordinance, 1969 (SE Ordinance)
Mr. Rashid Abdullah, (Respondent-II)	Director of the Respondent-I, and Chief Executive of Searle Company. Allegedly (i) passed on inside information to Respondent-I (ii) did not file disclosure with Pakistan Stock Exchange, formerly Karachi Stock Exchange (PSX) for trading made indirectly through Respondent-I	Section 15 E(3) and section 22 of the SE Ordinance.
Mr. Asad Abdullah, (Respondent-III)	Directors of Respondent-I and the Searle Company. Allegedly	Section 15 E(3) and section 22 of the SE Ordinance.
Mr. Zubair Razzak Pawala (Respondent-IV)	(i) passed on inside information to Respondent-I (ii) did not file disclosure with PSX for trading made indirectly through Respondent-I	
Syed Nadeem Ahmed (Respondent-V)		

Background of the Case:-

2. Brief facts of the case are:-





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- a) Respondent-II is a director of Respondent-I and Chief executive of Searle Company ("Searle"). Respondents III, IV and V are simultaneously directors of the Respondent-I and Searle Company.
- b) The Board of Directors of Searle Company in its meeting held on February 17, 2015 considered and approved unconsolidated and consolidated unaudited financial statements for the half year ended December 31, 2014.
- c) Searle Company convened its Board Meeting on April 21, 2015 for approving its accounts as of March 31, 2015. The notice and agenda of the meeting was circulated to all board members including Respondents II to V on April 14, 2015.
- d) Searle Company declared closed period from April 15, 2015 to April 21, 2015.
- e) Searle Company announced the following financial results on April 21, 2015, at 01:51 p.m.

Description	Nine months financial statements for the period ended March 31, 2015	Half-yearly financial statement for the period ended December 31, 2014 (For Reference purposes only)
Unconsolidated Financial Statement	EPS of Rs 13.05 (March 2014: Rs 6.68)	EPS of Rs 7.66 (December 2013 Rs 4.58)
Consolidated Financial Statement	EPS of Rs 13.94 (March 2014: Rs 8.38)	EPS of Rs 8.96 (December 2013 Rs 5.29)

- f) The improved financial position of Searle Company was, *prima facie*, "inside information" in terms of section 15B of the SE Ordinance, till it became public on April 21, 2015 at 01:51 p.m.
- g) Respondents-II to V being insiders of Searle Company were, *prima facie*, privy to this "inside information", in terms of section 15C of the SE Ordinance.
- h) Respondent-I purchased 100,000 shares of Searle Company on April 17, 2015 at the rate of Rs. 239.75 per share, during the time form 11:09 a.m. to 3:40 p.m.
- i) The aforementioned purchase by Respondent-I was, *prima facie*, made on the basis of abovementioned inside information, in violation of section 15A of the SE Ordinance. The inside information was, *prima facie*, passed on by Respondents-II to V in violation of section 15E (3) of the SE Ordinance.
- j) The Respondent-II to V being directors of the Respondent-I indirectly purchased shares of the Company during the closed period, *prima facie*, in violation of PSX Rule Book.

Initiation of proceedings by the Commission:

3. The Commission took cognizance of the aforesaid contraventions and issued the Notice calling upon the Respondents to explain through written reply along with documentary evidence, if any, as to why penalty may not be imposed upon:

- i. Respondent-I under sub-sections (1) and (2) of section 15E of the SE Ordinance for indulging in insider trading in contravention of the provisions of Section 15A of SE Ordinance.





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- ii. Each of the Respondents II to V under sub-section (3) of section 15E and section 22 of the SE Ordinance for disclosing Inside Information to the Respondent-I and trading indirectly in the shares of Searle, during close period respectively.

4. Mohsin Tayebaly and Company, Corporate legal Consultant's (**Legal Counsel**) vide letter dated February 18, 2016, filed reply to the Notice on behalf of Respondents. The hearings were scheduled on February 19, 2016, March 17, 2016 and March 31, 2016. However, the same were adjourned on the request of the Legal Counsel. The final hearing in the matter was rescheduled on April 07, 2016. On the given date, Mr. Mikael Azmat Rahim, Senior Associates of the Legal Counsel and Mr. Rizwan Ahmed, General Manager, Finance of the Respondent-I (collectively called hereunder "**Authorized Representative**") attended the hearing through video conferencing from SECP regional office, Karachi. The Authorized Representative stated that the Respondents have neither committed the alleged violation of section 15 of the SE Ordinance nor committed violation of the provisions of PSX Rule Book. The argument presented in support of the aforesaid contention in writing and contended verbally by the Authorized Representative may be summarized as under:-

Contentions regarding alleged violation of section 15A of the SE Ordinance

- a) *Notice is void ab initio, as the same has been issued under repealed law which has now been made part of Securities Act, 2015.*
- b) *Resolution to purchase the shares of the Searle Company was passed by the Board of Directors of the Respondent-I on February 26, 2015. At this meeting the Directors duly disclosed their interest in the proposed transaction while recommending the purchase of the shares of Searle and excused themselves from participation in the discussion and decision regarding this matter.*
- c) *Board Meeting of the Searle Company was held on April 21, 2015, for which notice and the agenda containing the alleged inside information was circulated on April 14, 2016.*
- d) *In continuation of Board's resolution, Extra Ordinary General Meeting (EOGM) of the Respondent-I was held on April 16, 2016, wherein, approval of shareholders for investment in associated company was sought pursuant to provisions of section 208 of the Companies Ordinance, 1984. Notice for convening the EOMG was issued on March 26, 2015, being at least 21 days before the date of the meeting.*
- e) *Immediately after obtaining the approval of the shareholders, Respondent-I purchased the shares of Searle on April 17, 2015.*
- f) *The information which the Commission claims was used by the Respondents i.e. the financials for the nine months period ended March 31, 2015, was not even available when the Board of Directors passed resolution to purchase the shares.*
- g) *When this inside information was made available to the Directors on April 14, 2015, the decision to purchase the shares was not in their control, but was made by the shareholders (on April 16, 2015). The shares of Searle were purchased immediately after obtaining the approval of the shareholders, which further demonstrates that the Directors had not purchased shares*





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based on connivance.

- h) The Respondent would have been "insiders" of company; however, since section 15C of the SE Ordinance has been repealed, the Directors are not insiders under the said law. Notwithstanding the same that for the purposes of the matter at hand, although the Directors may be insiders under section 130 of the Securities Act, 2015, they continued to abide by the applicable laws and have not or did not disclose any inside information pertaining to Searle. Any adverse inferences in this respect are denied.*
- i) More importantly, the entire allegation of the Commission against the Respondents appears to be based on circumstantial/conjectural evidence instead of actual substantive evidence.*
- j) The Commission's claim that Respondent made a profit of PKR 11.78/- per share is completely flawed. One can only determine if Respondent-I makes a profit or loss once the shares of Company are sold. In any event, it is pointed out that the decision to purchase the shares was taken in February, when the alleged inside information was not even available to the Directors; hence it cannot be concluded that the Directors were aware of the financial results that would exit at the end of the March. The Commission has blatantly ignored the facts that it has stated in the Notice i.e. that the half year financials of Searle as of December 31, 2014 were approved on February 17, 2015. It is therefore only logical to conclude that the resolutions of the Board of Directors of Unisys were based on the same which had been published.*

Contentions regarding alleged violation of Clause 5.19.15 of the PSX Rule Book:-

- i. None of the Directors of Respondent-I purchased shares of the Company directly or indirectly. The interpretation of "directly or indirectly" under the Rule Book pertains to the Director, his spouse and minor children and under no stretch of the imagination can be extended to companies in which such persons are directors and/or shareholders.*
- ii. The Directors do not, either jointly or severally, have a controlling interest in Respondent-I, which is a wholly owned subsidiary of International Brands Limited, which is a public limited company. It is pointed out that Syed Nadeem Ahmed and Mr. Zubair Razzak Palwala only have qualification shares in International Brands Limited and are nominee directors on the Board of Respondent-I, while Mr. Asad Abdullah has only 2.59% of the shares of International Brands Limited and Mr. Rashid Abdullah (along with his wife) only has 11.1% in the shares of International Brands Limited. Therefore there would be no basis to conclude that the Directors were acting indirectly through Respondent-I as in fact it is owned 100% by International Brands Limited which has numerous shareholders including foreign Funds.*
- iii It is added that a basic rule of company law, is that the company is distinct from its shareholders; hence it cannot be concluded that the Directors sought to use the company as a vehicle to evade clause 5.19.15 of the Rule Book, as the Directors would not receive the financial benefit; any benefit, if ultimately achieved, would be that of the company.*





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The Departmental Representatives stated that final decision to purchase the under reference shares was made on April 16, 2015, which was taken by the Respondent II to V, when in-fact, they were in possession of the "Inside Information". The Departmental Representatives further contended that the Respondent-I has committed violation of section 15A of the SE Ordinance, while, the Respondents II to V were violative of the provisions of section 15E(3) of the SE Ordinance.

5. At the closing of the hearing, the Authorized Representative was asked to furnish particulars of the shareholders of the Respondent-I, who participated in EOGM in addition to the Respondents II to V, for approving investment in Searle Company. The information was received in this office on April 11, 2016.

Framing of issues:-

6. After hearing the Authorized Representative and going through the available record, including written response to the Notice, the following issues have been framed with regard to violation of section 15A and 15E of the SE Ordinance:

- a) Whether or not the Notice issued under section 15E of the SE Ordinance is void ab initio.
- b) Whether or not there was requirement of approval of shareholders pursuant to section 208 of the Companies Ordinance, 1984.
- c) Whether or not there was any role of the Respondents II to V in the decision made in EOMG held on April 16, 2015, for purchasing of the under reference shares.

Analysis of the issues:-

7. Before addressing the above-framed issues, I would like to briefly discuss the constituents of the insider trading, which are (1) inside information in terms of section 15B of the SE Ordinance (2) insider in terms of section 15C of the SE Ordinance and (3) execution of transactions on the basis of inside information.

8. In the instant case, the Authorized Representative has plainly conceded that improved financial position of the Searle Company was "**inside information**" in terms of section 15B of the SE Ordinance with the contention that "*when the alleged inside information was made available to the directors, the decision to purchase the shares was not in their control*". The entire arguments of the Authorized Representative revolve around the contention that (i) the Notice was issued under repealed law and (ii) the decision to purchase the shares was taken by the Respondent in February 2015, when there was no such inside information. The decision of the Board of Directors was endorsed by the shareholders in EOGM, pursuant to the provision of section 208 of the Companies Ordinance, 1984. Now I come to the above framed issues, which are discussed hereunder in detail:-





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- (a) **The issue of Notice, issued under omitted section of SE Ordinance:-**The Authorized Representative stated that the Notice issued to the Respondents is void ab initio, as the same has been issued under repealed law which has now been made part of Securities Act, 2015. In this regard it is stated Part X of the Securities Act, 2015 deals with insider trading. Section 159 discusses in detail offences and penalties and offence of insider trading is criminal offence under Securities Act, 2015.

In order to determine the question whether or not aforementioned proceedings initiated under SE Ordinance are void, it seems imperative to understand the intent of legislature. The perusal of transitional provisions under section 177 of the Securities Act, 2015 reveals that various actions and proceedings initiated under SE Ordinance have been specifically given protection. Sub clause 13 of section 177 is reproduced here for ease of reference:-

(13) Anything done, actions taken, order passed,proceedings initiated and instituted, processes or communications issued,under Securities and Exchange Ordinance, 1969.....on coming into operation of any provision of this Act, be deemed to validly done, issued, taken, initiated, conferred, assumed and exercise and every action , prosecution or proceedings initiated and every order, directive, notification.....guidelines etc. issued by the Commission shall deemed to have been initiated, instituted or issued under this Act and shall be proceeded with to completion and be enforced and have effect accordingly (highlighted portion and bold letters are for emphasis and understanding)

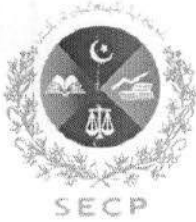
The bare perusal of Section 177 (13) as reproduced above reveals that various actions and proceedings initiated by the Commission under the omitted provisions of the SE Ordinance are saved during transitional period.

It is pertinent to mention that sub section 13 of section 177 of the Securities Act also provides protection to the rights and privileges of an effected person with respect to punishment that is to be awarded under the omitted sections of SE Ordinance, because the offence of insider trading under the Securities Act is a Criminal offence.

In the instant case, the alleged offence was committed before repealing of section 15 of the SE Ordinance and the matter was taken up with Searle Company on April 27, 2015 and the Respondent-I on May 12, 2015 i.e. before the promulgation of the Securities Act. I am, therefore, of the considered opinion that proceedings initiated in the instant case, under section 15 of the SE Ordinance are duly protected under transitional provisions of the Securities Act.

- (b) **Whether or not there was requirement of approval of shareholders pursuant to section 208 of the Companies Ordinance, 1984:-** The





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Authorized Representative contended that decision to purchase the shares was made on the basis of information made public by Searle Company on February 17, 2015. The Board of Directors of the Respondent-I approved purchasing of 100,000 shares of the Searle Company on February 26, 2015, but it was legally unable to materialize the recommendation of the Board, before satisfying the requirements laid down in section 208 of the Companies Ordinance, 1984. For this purpose, Notice for holding of EOGM was issued on March 26, 2015. He further pleaded that there was neither any inside information related to Searle Company on February 26, 2015 i.e. the date on which approval was granted by the Board of Directors of the Respondent-I nor on March 26, 2015 i.e. the date of issuance of Notice, for convening of EOGM, which was held in terms of section 208 of the Companies Ordinance.

I have reviewed the available record and the provisions of section 208 of the Companies Ordinance. The available record reveals that Respondent-I and the Searle Company, in terms of section 2 of the Companies Ordinance, are associated companies. Section 208 of the Companies Ordinance provides that subject to sub-section 2A *ibid* a company shall not make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution which shall indicate the nature period and amount of investment and terms and conditions attached thereto. In the instant case, the Board of Directors of the Respondent-I in its meeting held on February 26, 2015 approved the following resolution:-

RESOLVED that the proposal for making investment not exceeding PRK 25 million by acquiring 100,000 ordinary shares of The Searle Company Limited be and is hereby recommended to place before the members for approval.

FURTHER RESOLVED that the Extraordinary General Meeting of the Company be held to seek approval of the Members on above matters”.

The Respondent-I, pursuant aforesaid resolution as well as provisions of section 208 of the Companies Ordinance read with S.R.O read with S.R.O. 704(I)2011 dated July 13, 2011 (issued in exercise of powers conferred by section 208(2A)(a) of the Companies Ordinance) convened EOGM on April 16, 2015 for seeking approval of its members. In order to verify the contention, I have reviewed the record, obtained from Company Registration Office, Karachi which reveals that Form 30 (required to be filed pursuant to section 208) was duly filed by the Respondent-I on April 24, 2015. In my opinion, the plea of the Respondent-I appears to be tenable from the relevant record of Company Registration Office.

(c) Whether or not there was any role of the Respondents II to V in decision taken in EOGM held on April 16, 2015: The Authorized Representative stated that



when the alleged inside information was made available to the directors, the decision to purchase the shares was not in their control, as the decision in this regard was to be made in EOGM by the shareholder rather than the Respondents. The plea has been considered and observed that the EOGM held on April 16, 2015 (wherein, approval for purchasing of shares of Searle Company was granted) was attended by the following person

Present in EOGM	
Mr. Muhammad Rashid Abdullah (also chaired the meeting) Proxy for *International Brands Limited	Respondent-II
Mr. Asad Abdullah	Respondent-III
Mr. Zubair Razzak Palwala	Respondent-IV
Syed Nadeem Hussain	Respondent-V
Mr. Ashraf Jafri	-

* The Respondent-I is wholly owned subsidiary of International Brands Limited.

It is pertinent to mention that Respondents II to V became privy to the "Inside Information" on April 14, 2015. The above given table reveals that Respondents II to V attended the EOGM. They voted in favor for purchasing the shares of Searle, when they were in possession of the "Inside Information". However, it is pertinent to mention here that the Respondents-II to V held only one share of Respondent I. Further, Respondent-II was reportedly the proxy for International Brands and voted as per the instructions of International Brands Limited.

9. **Alleged violation of PSX Rule Book:** - Concerning the allegation of purchasing shares during closed period in violation of clause 5.19.15. of the PSX Rule Book, the Authorized Representative stated that the interpretation of "directly or indirectly" under the Rule Book pertains to director, his/her spouse and minor children and under no stretch of the imagination can be extended to companies in which such persons are directors and/or shareholders.

10. In order to analyze the contention, I have reviewed Clause 5.19.15 of the PSX Rule Book, which provides as under:-

5.19.15. DISCLOSURE OF INTEREST BY A DIRECTOR HOLDING COMPANY'S SHARES:

Where any director, CEO or Executive of a listed company or their spouses sell, buy or transact, whether directly or indirectly, in shares of the listed company of which he is a director, CEO or Executive, as the case may be, he shall immediately notify in writing to the Company Secretary -----

Provided that each listed company shall determine a closed period prior to the announcement of interim/final results and any business decision, which may materially



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affect the market price of its shares. No director, CEO or Executive shall, directly or indirectly, deal in the shares of the listed company in any manner during closed period. The closed period shall start from the day when any document/statement, which forms the basis of price sensitive information, is sent to the board of directors and terminate after the information is made public.

Every listed company shall advise its directors about the closed period at the time of circulating agenda and working papers for the board meetings, along with sending intimation of the same to the stock exchanges.

11. The conjunctive reading of clause 5.19.15 of the PSX Rule Book reveals that the expression "directly" appear in the aforesaid clause of the Rule Book pertains to the directors and their spouses while the expression "indirectly" pertains to transactions made by directors and/or their spouses through other entities, where they have positions, interest/shareholding etc. The contention of the Authorized Representative is contrary to the provisions of the PSX Rule Book, as it would defeat the intent of the instant regulation.

Decision:

12. In order to arrive at decision, I have considered the following facts:-

- There was no **Inside Information** when the Board of Directors of the Respondent-I passed resolution on February 26, 2015, for purchasing of shares of Searle Company.
- There was also no **Inside Information** when the Respondent-I issued notice on March 26, 2015 for holding of EOGM.
- After passing the resolution on February 26, 2015, the Respondent-I had the opportunity to purchase the shares at a relatively lower price. As per record of PSX, price of the scrip witnessed a decreasing trend since February 27, 2015. It is pertinent to mention here that market price of the scrip fell below Rs. 200/- on March 31, 2015, as is evident from the table given below:-

Trading Date	Day Open Price	Day High Price	Day Low Price	Day Close Price
February 27, 2015	247.31	248.85	244	244.67
March 2, 2015	244.67	247	232.44	232.5
March 3, 2015	232.5	239	229	232.78
March 4, 2015	232.78	237	230.75	232.43
March 5, 2015	232.43	237.5	233	233.64
March 6, 2015	233.64	238.47	232.25	234.76
March 9, 2015	234.76	234.98	230.5	231.04
March 10, 2015	231.04	232.9	219.49	219.51
March 11, 2015	219.51	218	211.51	214.59
March 12, 2015	214.59	221.48	214.99	216.17
March 13, 2015	216.17	226.97	217.7	226.97
March 16, 2015	226.97	237.97	229.5	231.86





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March 17, 2015	231.86	235.99	228.02	233.32
March 18, 2015	233.32	234.5	221.66	223.45
March 19, 2015	223.45	229.01	219.36	221.08
March 20, 2015	221.08	230.5	222	229.08
March 24, 2015	229.08	233	225	226.87
March 25, 2015	226.87	228	220	220.85
March 26, 2015	220.85	225	209.81	215.17
March 27, 2015	215.17	220.25	209.49	211.47
March 30, 2015	211.47	212	200.9	200.9
March 31, 2015	200.9	210.94	194	210.94

However, the Respondent-I did not purchase any shares before satisfying the requirements, laid down in section 208 of the Companies Ordinance.

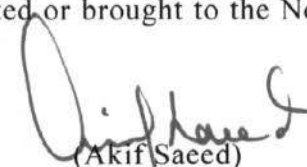
- iv. The Respondent-I purchased the same quantity of shares on April 17, 2015, which was originally recommended by the Board of directors on February 26, 2015 and approved in EOGM on April 16, 2015.

13. Based on the foregoing, I am of the view that the Inside Information was not the basis for purchase of 100,000 shares of Searle Company. Thus, Respondent-I did not commit violation of section 15A of the SE Ordinance. Hence, the Respondent II to V did not commit any violation of section 15E(3) of the SE Ordinance. Further, the violation of clause 5.19.15 of the PSX Rule Book does not arise since the decision was taken by the shareholders.

14. Good corporate governance practices require a person to recuse himself from a decision/ proceedings where he has conflict of interest or has some privilege information. Respondents II to V should have preferably recused themselves from the EOGM as they were privy to certain privilege information regarding shares to be purchased for which the EOGM was called. I would therefore advise the Respondents II to V to adopt the good corporate governance practices in letter and spirit in future.

15. This Order is being issued without prejudice to any other action that the Commission or the Pakistan Stock Exchange may initiate against the Respondent in accordance with the law on matter subsequently investigated or brought to the Notice of the Commission.




(Akif Saeed)
Commissioner (SMD)

Islamabad.

Announced on June 01, 2016