



Securities and Exchange Commission of Pakistan  
Securities Market Division

Before the Commissioner (SMD)

In the matter of Show Cause Notice Issued to  
National Clearing Company of Pakistan Limited

<i>Date of Hearings</i>	<i>April 30, 2018 and May 31, 2018</i>
<i>Present at the Hearings</i>	<i>Mr. Muhammad Lukman, Chief Executive Officer Mr. Aamir Mobin, Chief Regulatory Officer Mr. Imran Ahmed Khan, CFO &amp; Company Secretary Mr. Kashif Alam Khan, Chief Risk Officer Mr. Syed Haseeb Ahmed Shah, AGM-RMS Department</i>
<i>Place of Hearings</i>	<i>In person and through Video Conference from Regional Office, Karachi</i>

**ORDER**

This Order shall dispose of the proceedings initiated through Show Cause Notice (SCN) bearing No. 1(1) SMD/ADJ/NCCPL/2018 dated April 18, 2018. The SCN was served on the National Clearing Company of Pakistan Limited (“Respondent”) by the Securities and Exchange Commission of Pakistan (Commission) under section 150 of the Securities Act, 2015 (Securities Act). The Respondent is incorporated in Pakistan as an unlisted public limited company under the Companies Act, 2017 and is a licensed person, licensed as a clearing house under the Clearing House (Licensing and Operations) Regulations, 2016 promulgated under the Securities Act. The Respondent has framed the National Clearing Company of Pakistan Limited Regulations, 2015 (“NCCPL Regulations”) under the Securities Act, approved by the Commission.

2. Brief facts of the case leading to issuance of SCN are that the Commission vide order dated March 31, 2017, in exercise of powers conferred under Section 138 of the Securities Act conducted routine On Site Inspection of the Respondent. The inspection team submitted its report on December 15, 2017 (“Inspection Report”) which inter alia revealed the following:

- (i) **Regulation 12.5.2 (c) of the NCCPL Regulations:** The VaR Estimates calculation made by the Respondent on a selected day was observed; and it was found that the Respondent has been calculating incorrect VaR estimates in respect of twenty (20) securities. The Raw VaR of said securities was not being scaled up by applicable factor based on the trading frequency and impact cost mentioned in clause 12.5.2 (a) of NCCPL Regulations. Respondent has been applying lower than the applicable scaled up factors to the Raw VaR and resultantly calculating low final VaR at the end of the day.





**Securities and Exchange Commission of Pakistan  
Securities Market Division**

Recalculation of the VaR Estimates in accordance with the criteria mentioned in the NCCPL Regulations revealed that NCCPL was calculating 3% to 22% less estimates, as exhibited below:

Symbol Code	Impact cost	As per Report (Respondent)		Recalculation		Short collection in %
		Scaled up factor	VAR Estimate	Scaled up factor	VAR Estimate	
		B	Roundup	B	Roundup	
JSBL	3.47	1.00	12.50	2.24	22.00	-9.50
ARPL	1.37	1.00	10.50	1.73	14.00	-3.50
ABOT	1.67	1.00	10.00	1.73	13.00	-3.00
ICI	1.32	1.00	10.50	1.73	14.00	-3.50
MEBL	1.83	1.00	10.00	1.73	13.50	-3.50
ATBA	1.92	1.00	11.00	2.24	18.00	-7.00
EFUL	1.62	1.00	11.50	1.73	16.00	-4.50
NESTLE	1.43	1.00	10.00	2.24	15.00	-5.00
HMB	1.24	1.00	10.00	1.73	13.00	-3.00
IGHL	1.31	1.00	10.00	1.73	13.50	-3.50
ABL	1.24	1.00	10.00	1.73	13.00	-3.00
FFLM	7.11	1.00	19.00	2.24	33.00	-14.00
RMPL	2.13	1.00	10.00	2.24	16.00	-6.00
TGL	1.38	1.00	10.00	1.73	13.50	-3.50
ATIL	1.05	1.00	10.00	2.24	16.50	-6.50
TPLPL	2.89	1.00	23.00	2.24	36.50	-13.50
JGICL	1.63	1.00	10.00	2.24	15.50	-5.50
HABSM	1.97	1.00	10.50	1.73	14.50	-4.00
FANM	6.10	1.00	27.50	2.24	49.50	-22.00
JLICL	1.59	1.00	10.50	1.73	14.50	-4.00

(ii) **Regulation 12.5.2 (d) of the NCCPL Regulations:** Due to incorrect calculation of VaR Estimates, the Respondent was collecting lower Exposure Margins. Therefore, a portion of the exposure remained uncovered. For instance, on October 25, 2017, total exposure of 20 scrips mentioned in para (i) was Rs.90.687 million against which Respondent collected exposure demand of Rs.10.941 million while as per the recalculation said demand should have been Rs.16.283 million, as exhibited below:

Symbol Code	Exposure	Demand as per Respondent	Recalculation	Short Collection in Value
JSBL	26,050,890	3,581,997	6,304,315	(2,722,318)





Securities and Exchange Commission of Pakistan  
Securities Market Division

Symbol	14,659,284	1,693,147	2,257,530	(564,383)
ARPL	14,659,284	1,693,147	2,257,530	(564,383)
ABOT	11,465,774	1,261,235	1,639,606	(378,371)
ICI	9,396,861	1,085,337	1,447,117	(361,780)
MEBL	7,270,804	799,788	1,079,714	(279,926)
ATBA	2,784,225	336,891	551,277	(214,386)
EFUL	3,800,022	480,703	668,804	(188,101)
NESTLE	3,169,050	348,596	522,893	(174,297)
HMB	4,807,701	528,847	687,501	(158,654)
IGIIL	3,129,152	344,207	464,679	(120,472)
ABL	3,230,441	355,349	461,953	(106,604)
FFLM	225,500	47,130	81,857	(34,727)
RMPL	323,200	35,552	56,883	(21,331)
TGL	333,506	36,686	49,526	(12,840)
ATIL	30,096	3,311	5,462	(2,151)
TPLPL	10,490	2,654	4,212	(1,558)
JGICL	304	33	52	(19)
HABSM	390	45	62	(17)
FANM	-	-	-	-
JLICL	-	-	-	-
<b>Total</b>	<b>90,687,690</b>	<b>10,941,508</b>	<b>16,283,442</b>	<b>(5,341,934)</b>

- (iii) **Regulation 12.5.5 of the NCCPL Regulations:** The haircuts are applicable on the Margin Eligible Securities based on VaR. Due to miscalculation of VaR, haircuts at which the Margin Eligible Securities are discounted for valuation purpose was also miscalculated. For instance, in the scrip of ICI, Respondent applied Haircut of 15% which should have been 17.50%.

Similarly, haircuts of ABL, HBL, MEBL and TGL were also wrongly applied. The said scrips were previous eligible for margin. Details are as follows:

Symbol Code	Notice date of Margin Eligible Securities as Collateral	Haircut percentage	
		As per NCCPL	Re-Calculation
ABL	16-Jan-17	15.00%	17.50%
ABL	1-Aug-16	15.00%	17.50%
HMB		15.00%	17.50%
MEBL		15.00%	17.50%
TGL		15.00%	17.50%

- (iv) **Regulation 12.5.2 of the NCCPL Regulations:** Loads Limited was listed on the Pakistan Stock Exchange on November 01, 2016. Applicable Exposure Margin on newly listed security for first six months (i.e. up till May 1, 2017) was to be collected at the rate of 25% and thereafter, routine margins were applicable. However, after completion of six months, Respondent continued to call margin at the rate of 25% till July 28, 2017.





Securities and Exchange Commission of Pakistan  
Securities Market Division

- (v) **Schedule 1 of Regulation 12 of the NCCPL Regulations:** First Street Capital (Pvt.) Limited ("FSCPL") was admitted as Margin Financier as on May 09, 2016 even when its NCB was below the minimum capital requirement, as exhibited below:

S. No.	NCB as on	Amount
1	December 31, 2015	10,322,704
2	June 30, 2016	13,237,949
3	December 31, 2016	15,179,750

- (vi) **Regulation 12.3.1 of the NCCPL Regulations:** Two certificates were submitted by certain brokers on the same date, one prepared as on the date specified by the Pakistan Stock Exchange showing negative balance and the other as on the date suitable to broker to show the positive NCB as detailed in the following table which was accepted by the Respondent:

S.no	Member	Submitted Date	Capital Adequacy	Remarks
1	128 Securities (Pvt.) Ltd.	08-Aug-17	-2,500,443	NCB as on 30-June-2017
		08-Aug-17	6,859,570	Revised NCB as on 03-August-2017
2	Value Stock & Commodities (Pvt.) Ltd.	18-Nov-16	-9,620,818	Correction NCB as on 30-June-2016
		18-Nov-16	18,449,321	Revised NCB as on 07-Oct-2016
3	Khadim Ali Shah Bukhari Securities (Pvt.) Ltd.	21-Mar-16	19,584,954	NCB Certificate Date 31-Dec-2015
		21-Mar-16	9,674,251	Revised NCB Certificate Date 31-Jan-2016

The implication of the above is that the brokers were required to affirm that they have been maintaining minimum net capital requirements at all time by clicking yes to a NCHS functionality. With a negative balance on a previous date the brokers' affirmation proved falsified.

- (vii) **Regulation 7B.3.1.1 of the NCCPL Regulations:** Notice of listing of TPL Properties Limited was issued by the Pakistan Stock Exchange on June 30, 2016, however, the same was not included in the list of MF eligible securities on July 15, 2016 instead it was included from January 16, 2017 after a delay of 6 months.

Further, two securities namely First Dawood Mutual Fund and First Constellation Modaraba were excluded from the list of MF Eligible Securities on January 16, 2017. Upon inquiring the reason for exclusion of these two securities, the inspection team





Securities and Exchange Commission of Pakistan  
Securities Market Division

was informed that the said securities have been delisted. However, when the inspection team required copies of delisting notices, the team was provided with a copy of quotation and informed that these have been excluded due to suspension of securities dated March 26, 2013 and February 24, 2012 respectively which is against the eligibility criteria.

Moreover, MF eligible securities list dated September 12, 2017 available on website included a futures contract named KSE 30 SIFC Contract as an eligible security.

(viii) **Regulation 7C.3.1 of the NCCPL Regulations:** It was noted that Dewan Farooque Motors Limited (DFML) has 48,557,335 free float shares while 35% of issued capital is also 48,557,335 shares. DFML was excluded from the list of Margin Trading Eligible Securities due to auditors opinion and profit before tax, however, DFML was cleared in the criteria of free float of shares by the Respondent despite the fact the free float was not more than 35% of issued capital and had less than 60 million free float shares.

(ix) **Regulations 28.2.1 and 28.10 of the NCCPL Regulations:** In the following instances, the Respondent failed to collect CGT. Further, penalty was not imposed and suspension/restriction was not made as per requirements of the NCCPL Regulations. Further, there were also delays in imposition of penalty and restriction/suspension:

S.N	CM ID		UIN	CGT Outstanding Amount for 2016-2017	Penalty Imposed (Yes/No) as per clause 28.10.5	Suspension or Restriction made (Yes/No) as per clause 28.10.2
1	00547		IFCI956ACT	445,750,772	No	No
2	00521		020780516-3604140	58,520,534	Partial penalty imposed	No
3	00547		CBNA2007US	11,138,226	No	No
4	00521		GMCOP46-3785747EIN	11,078,737	No	No
5	00521		070673209-4364371	9,874,361	Partial penalty imposed	No
6	00521		REMF102008US	8,134,806	Yes	No





Securities and Exchange Commission of Pakistan  
Securities Market Division

7	00521	AEAE122015LU	6,829,409	Yes	No
8	00521	DC20219	6,721,000	No	No
9	00521	TRST74- 6000164TIN	6,043,509	No	No
10	00521	090416410- 4682505	5,319,161	No	No
11	13417	4200004596938	8,249,390	Yes	Yes
12	13417	4230194294489	3,338,220	Yes	Yes
13	01826	3520199622149	2,564,256	No	No
14	03939	0058003	1,362,433	No	Yes
15	13417	4200004596928	1,105,060	Yes	Yes
16	02048	3310095007625	88,844,647	No	No
17	02048	3310005790909	88,387,639	No	No
18	02048	0014764	84,282,679	No	No



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Securities and Exchange Commission of Pakistan  
Securities Market Division

19	02048		3310006133319		79,298,008	No	No
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Regulation 28.10.5 requires Relevant Clearing Member shall also be liable to pay penalty for deposits pertaining to CGT in the following manner:

First default by the client or proprietary in a financial year	Penalty @ 2% of the defaulted amount of such UIN(s) including proprietary UIN.
Second default by the client or any other client or proprietary in a financial year	Penalty @ 4% of the defaulted amount of such UIN(s) including proprietary UIN.
On any subsequent default by any UIN or proprietary	Penalty @ 10% of the defaulted amount of such UIN(s) including proprietary UIN.

The following non-compliances in respect of above mentioned regulation were observed during financial year 2016-2017 where the Respondent has not levied penalties in accordance with the regulatory framework:

S. no	CLIENT UIN	CGT Liability as per the NCCPL Report	Increase in CGT Liability Subsequently	Penalty	Month of Penalty	Percentage of Penalty	Remarks
1	DPT51-6012443 TIN	602,678		60,268	Mar-17	10%	First Penalty in financial year should be 2% instead of 10%, further on second default it should be 4% rather than of 7%
	DPT51-6012443 TIN	9,550,242	6,543,595	654,359	Apr-17	7%	
2	FTIC00 1454035 CA	7,326,292	1,583,862	63,354	Jan-17	1%	First Penalty in financial year should be 2% instead of 1%
3	LREME P05201 0US	4,957,785		495,778	Feb-17	10%	First Penalty in financial year should be 2% instead of 10%, further on second default it should



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Securities and Exchange Commission of Pakistan  
Securities Market Division

									be 4% rather than of 9%
	LREME P05201 0US	23,193,488	20,391,351	2,039,135	Mar-17	9%			
4	0045452	11,367		227	Jan-17	2%			Second Penalty in financial year should be 4% instead of 1%.
	0045452	12,708	4,715	94	Mar-17	1%			
5	EVSEM F11200 6US	3,088,884		61,778	Nov-16	2%			Second Penalty in financial year should be 4% instead of 2%.
	EVSEM F11200 6 US	9,223,673	8,884,523	177,690	Dec-16	2%			
6	CR- 113952	1,299,422		51,977	Dec-16	4%			First Penalty in financial year should be 2% instead of 4%.
7	CR- 53292	354,862		7,097	Nov-16	2%			Second Penalty in financial year should be 4% instead of 2%.



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**Securities and Exchange Commission of Pakistan  
Securities Market Division**

	CR-53292	562,336	556,120	11,122	Dec-16	2%	
8	CR-53292	2,506,671	1,590,035	31,801	Jan-17	1%	First Penalty in financial year should be 2% instead of 1%, further on second default it should be 4% rather than of 0.3%
	CR-53292	3,006,648	499,977	10,000	Feb-17	0.3%	
9	33-73244A ND811-08226	2,630,088		105,204	Dec-16	4.0%	First Penalty in financial year should be 2% instead of 4%, further on second default it should be 4% rather than of -0.2%
	33-73244A ND811-08226	6,637,044	(375,234)	(15,009)	Jan-17	-0.2%	
	33-73244A ND811-08226	12,170,207	12,153,162	486,126	Feb-17	4.0%	
10	WDCR PMT95-4545390 TIN	303,756		6,075	Nov-16	2%	Second Penalty in financial year should be 4% instead of 0.1%.
	WDCR PMT95-	314,519	10,763	215	Jan-17	0.1%	



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Securities and Exchange Commission of Pakistan  
Securities Market Division

	4545390 TIN								
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- (x) **Regulation 7A.2.1(i) of the NCCPL Regulations:** As part of the eligibility criteria for SLB participants, the Respondent has not specified the capital adequacy requirement that the Broker Clearing Member are required to fulfill under Schedule I of regulation 12 of the NCCPL Regulations.
- (xi) **Regulation 29.2.1 of the NCCPL Regulations:** The third supplemental trust deed for the SGF Trust was executed on 30 May 2016, in which several amendments were made however, Commission's approval as required on said amendments were missing as required under the said regulations.
3. It appeared from the foregoing that the Respondent *prima facie* was in violation of the NCCPL Regulations.
4. The Commission took cognizance of the aforementioned alleged violations and served the SCN dated April 18, 2018 under section 150 of the Securities Act to the Respondent. The Respondent was called upon to Show Cause in writing within seven days from the date of receipt of the SCN and the case was scheduled for hearing before the undersigned on April 30, 2018. Mr. Muhammad Lukman, Chief Executive of the Respondent filed written reply to the SCN vide letter of April 26, 2018. Hearing in the matter was held on April 30, 2018 and a second hearing was scheduled and held on May 31, 2018.
5. The submissions made by the Respondent in response of the SCN and verbally during the course of hearing are summarized as under:
- The incorrect calculation of VaR Estimates was due to an error in one of the functions performed by the computerized risk management system which incorrectly assigns scaled up factor for a few stocks. The system has been provided by PSX under an SLA and the said error was carried forward. The issue has been rectified. Commission was requested to condone the non-compliance.*
  - The process of shifting margin calculation after the first six months of listing was earlier being done manually which has now been automated. Commission was requested to condone the non-compliance.*
  - The incorrect Hair Cut applicability was due to incorrect calculation of VaR. Commission was requested to condone the non-compliance.*
  - First Street Capital was a broker of erstwhile ISE and applied in April 2016 for admission as Margin Financier with NCB of 10.32 million (as of Dec 31, 2015), i.e. after integration of stock exchanges. However, regulations for Margin Financing were amended earlier in January 2016 where NCB requirement was enhanced to 20*





Securities and Exchange Commission of Pakistan  
Securities Market Division

- million. Prior to these amendments, NCB of 5 million was required for brokers of ISE.
- (v) NCCPL Regulations do not contain any penal provisions with respect to maintaining the prescribed NCB amount. Penal provisions are however available for non-submission of NCB. The Respondent has proposed changes in its regulations to deal with such situations and submitted the same to the Commission on July 28, 2017. The Respondent has submitted that it has not acted in contravention of any provision of NCCPL Regulations.
- (vi) In relation to MF eligible securities, the Respondent conducted its eligibility review for period January 1, 2016 to June 30, 2016. However, TPL was listed effective July 4, 2016 thus not included in the MF eligible list. Since the two companies were suspended, the matter did not have any business impact. KSE-30 SIFC contract has now been removed from the MF eligible securities. Commission was requested to take a lenient view.
- (vii) In relation to MTS eligible securities, Even though the free float criteria was met, there were other criteria specified in the regulations which were not met and as such DFML was excluded from the list. Due controls have been put in place to ensure that the review is carried out accurately.
- (viii) With reference to non-collection of capital gain tax and failure to impose penalties, restriction/suspension, for certain instances the Respondent explained that there were cogent grounds to withhold action under its regulations. Further, major penalties have correctly been imposed as per the rates prescribed. Commission was requested to take a lenient view with respect to matter where the Respondent has not collected CGT or imposed penalty or restriction on account of practical grounds.
- (ix) For carrying out amendments in the SGF Trust Deed without the Commission's approval, the Respondent explained that only corresponding amendments relating to amendments in the NCCPL regulations for CCP and SGF were carried out in the trust deed. The Respondent had acted in good faith. If Commission is of the view that amendments necessitated its approval, the same may be condoned since the Trust Deed is basically in order.
- (x) Considering the failure to prescribe the capital adequacy requirement for SLB participants in Schedule 1 of Regulation 12, the Respondent will take all necessary steps to prescribe this requirement and submit proposal to the Commission. Since there have been no transactions in SLB market since March 2017, Commission was requested to take a lenient view.

6. The Respondent also submitted details of its future plans relating to strengthening and expansion of its risk management for *inter alia* introduction of new products vide letter of May 31, 2018 which include the following:

- (i) In order to enable launch of single stock options, the Respondent has developed a detailed risk management proposal for the same with the approval of its Risk Committee.





Securities and Exchange Commission of Pakistan  
Securities Market Division

- (ii) For introduction of Exchange Traded Funds, a proposal for its risk management has been prepared by the Respondent.
- (iii) Considering the expected expansion in derivative products at PSX, there would be a need to meet the requirement to assess risk on cumulative basis (i.e. options, cash settled futures, deliverable futures and other derivatives products). Therefore, the Respondent has planned to procure a comprehensive risk management system "SPAN". Board of Directors of the Respondent has principally approved procurement of SPAN.
- (iv) Introduction of position limits based on the risk criteria that would include broker's rating (determined by the Respondent) and risk profile as the key factor.
- (v) Based on the periodic analysis of the historic trade and exposure date, introduction of different exposures risk threshold level and reporting breach in any of this set level to competent authority (i.e. management, or board, and / or commission) for remedial action.
- (vi) Development of in-house SGF valuation model that would help NCCPL re-size the protection fund on monthly or quarterly basis. The contribution to the fund would also be linked to individual securities broker risk contribution measured over the assessment period.

7. I have heard the arguments presented by CEO and Representatives of the Respondent during the hearing. Additionally, I have perused the available record, existing regulatory framework and written response filed by the Respondent. The primary allegation against the Respondent is that it was in non-compliance with the NCCPL Regulations.

8. I am of the considered view that these non-compliances by the Respondent were unintentional errors which in most cases have been rectified by the Respondent. The primary reason for such errors appears to be lack of high quality human resources employed by the Respondent. Since the Respondent is a major capital market institution, it must have in place necessary infrastructure for perpetuation of its position and the integrity of the securities market. Considering the expanding role of the Respondent with evolution in the capital market it is critical that it has high quality human resources who have adequate understanding of the capital market and are competent to perform their duties. Further, it is essential that the Respondent has a dedicated compliance team which can perform daily and other periodical compliance of the Respondent's risk management functions.

9. In view of the foregoing and especially considering that the Respondent has admitted the errors and rectified the same, I have decided to conclude the proceedings. However, to ensure ongoing compliance and strengthening of the Respondent, which is a major capital market institution, the Respondent is directed to ensure the following within a reasonable time:

- (i) Employ high quality technical resource suited to its evolving functions;





Securities and Exchange Commission of Pakistan  
Securities Market Division

- (ii) Put in place a dedicated compliance team for continuous monitoring of its risk management functions;
- (iii) Considering that the Respondent is already in the process of procuring SPAN, it must ensure that the transition from its existing risk management system is smooth, uninterrupted, does not compromise effective and continuous monitoring of risk and keeps investor protection as top priority; and
- (iv) Keeping in view the Respondent's dedicated risk management and compliance functions, it must set aside adequate amount of revenue for the same and accordingly carry out changes in its tariff structure.

10. It is satisfactory to note that the Board of Directors of the Respondent has already principally approved procurement of SPAN.

11. It is expected of the Respondent, being an integral capital market infrastructure institution, to further build upon its standing as market facilitator with high levels of integrity and confidentiality. The Respondent must continuously strive towards introducing state-of-the-art automated business systems for its stakeholders, which will go a long way in strengthening investor confidence.

12. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with the law on matter subsequently investigated or otherwise brought to the knowledge of the Commission.

(Zafar Abdullah)  
Commissioner (SMD)

Announced on June 6, 2018  
Islamabad.

