



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division

Before the Director (Securities Market Division)

**In the matter of Show Cause Notice dated July 28, 2005
issued to M.S. Securities (Pvt.) Limited**

Date of Hearing

August 23, 2005

Present at the Hearing:

Representing M.S. Securities (Pvt.) Ltd.

- (i) *Mr. Rizwan Akhtar – Director*
- (ii) *Mr. Kamran Gaba – Accounts Officer*

Assisting the Director (SM):

- (i) *Mr. Ahmad Zafeer – Deputy Director*

ORDER

1. The present matter arises out of a Show Cause Notice (“Notice”) bearing No. SMD/SCN/1/2005/001 dated July 28, 2005 issued by the Securities and Exchange Commission of Pakistan (“the Commission”) to M.S. Securities (Pvt.) Limited (“the Respondent”).
2. Brief facts of this case are that between March 04, 2005 and March 16, 2005, the Respondent carried out 11 trades in the shares of National Bank of Pakistan (“NBP”), Pakistan Telecommunication Company Limited (“PTCL”) and Oil & Gas Development Company Limited (“OGDC”) through the Karachi Automated Trading System (“KATS”) of the Karachi Stock Exchange (Guarantee) Limited (“KSE”) on behalf of three clients of the Respondent.

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division

3. Each of these trades prima facie cancelled each other out and there was no change in the beneficial ownership of the shares. It appeared that in the course of these trades the Respondent purchased and sold, on behalf of the same clients, 8,400 shares of NBP, 49,500 shares of PTCL, and 119,700 shares of OGDC.
4. Such practice is likely to interfere with the fair and smooth functioning of the market by creating a false and misleading appearance of trading activity in the scrips mentioned hereinabove and is further likely to be detrimental to the interests of the investors.
5. The Commission obtained the following KATS data from the KSE for the relevant period, which revealed that during the month of March 2005 the Respondent executed the following trades which prima facie cancelled each other and not resulted in change in beneficial ownership:

Date	Client Code	Name of Share	No. of Shares	Purchase & Sale Rate	Time of Execution
10/03/2005	157	NBP-REG	1,000	159.30	1318530002
10/03/2005	157	NBP-REG	3,000	158.65	1326180023
11/03/2005	157	NBP-REG	4,400	157.90	1458550053
		Total	8,400		
4/03/2005	189	PTC-REG	25,000	72.95	1019560006
7/03/2005	189	PTC-REG	24,500	79.75	1033190010
		Total	49,500		
8/03/2005	189	OGDC-REG	50,000	143.45	1152360078
8/03/2005	189	OGDC-REG	50,000	146.35	1245090021
10/03/2005	189	OGDC-REG	13,900	166.95	1146340038
15/03/2005	420	OGDC-REG	700	186.10	1113210008
16/03/2005	420	OGDC-REG	100	192.85	1224530066
16/03/2005	420	OGDC-REG	5,000	191.40	1052020115
		Total	119,700		

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division

6. In view of the above findings the Commission issued a Notice to the Respondent dated July 28, 2005 detailing the aforesaid facts and asking it as to why action should not be initiated against it under section 17 of the Securities and Exchange Ordinance, 1969 (“the Ordinance”) and the Brokers and Agents Registration Rules, 2001 (“the Rules”). A copy of the aforesaid KATS data was annexed to the Notice in order to provide to the Respondent an opportunity for answering to the same. The Respondent was asked to submit a written reply along with the documentary proof within seven days of the Notice and the hearing was fixed in Islamabad for August 10, 2005. This Notice was sent to Respondent through TCS courier services.
7. The Respondent not only failed to submit a written reply to the Notice within the prescribed period of seven days, but it also did not seek an extension from the Commission in this regard.
8. Furthermore, the Respondent failed to appear before the Commission on the prescribed date, without any prior intimation to the Commission, or a request for adjournment. In order to determine whether or not the Notice had been served on the Respondent, the Commission traced the delivery of the Notice through the courier. The courier confirmed that the Notice was duly delivered to the Stock Exchange Office of the Respondent on 29th July 2005, where it was received by one Mr. Asif.
9. However, the Commission provided final hearing opportunity to the Respondent by publishing Notice in Business Recorder on August 19, 2005 and Daily Dawn & Daily Jang on August 20, 2005. The Respondent was called upon to appear before the Commission and to explain as to why action should not be initiated against it under the said Notice within seven days of publication of this notice, failing which ex-parte action would be initiated against M. S. Securities including but not limited to suspension of membership from the Stock Exchange.
10. On August 23, 2005 the authorized representative of the Respondent, Mr. Rizwan Akhtar, Director and Mr. Kamran Gaba, Accounts Officer appeared before me. The main points raised by the Respondent in its oral submission were as follows:

- a. The Membership of the Respondent has been inactive since June 29, 2005 and the Respondent has already given application to KSE regarding transfer of Corporate Membership Card in favor of Shahid Ali Habib Securities (Pvt.) Limited. Further, the Respondent has already transferred Room No. 84 to 86 in the name Mr. Abid Ali Habib. The office rooms are therefore remained locked and once in a while staff of Mr. Abid Ali Habib visits the office. The Respondent was unaware of the fact that the Notice has been issued to it, otherwise it would have definitely responded to the Commission.
 - b. The Respondent was also not aware of the publication of the Notice in the newspapers. However, when the Respondent visited the Karachi Stock Exchange office for transfer of membership, they were informed that the said transfer could not be initiated unless the Respondent clarifies its position with the Commission. After getting the information about the said Notice the Respondent appeared before the Commission, without further delay.
 - c. The three accounts which are mentioned in the Notice are of two traders namely Ms. Nazish (157) and Mr. Imran (420) while account No.(189) is of Mr. Sultan Haji Suleman, Nominee Director of the Respondent.
 - d. KATS operators use trader's code at the time of entering the trades in the KATS for identification of trades. However, client-wise details are maintained by the traders themselves and at end of the day traders allocate all transactions of the day executed under their code numbers to the respective client account in the back office system.
11. In the course of the hearing the Respondent was requested to provide the Commission with the Account Opening Forms of trader's clients on whose behalf these trades were conducted alongwith copies of their National Identity Cards, Transactions Detail and Client's ledgers to establish the accuracy of matching done by the Respondent of each buy and sell order and to further establish whether or not the beneficial ownership changed, as claimed by the Respondent.

12. The Commission received a written reply dated August 24, 2005 from the Respondent along with its system generated Clients Transactions Detail for the relevant trades to support its claim and counter the allegations made against it in the Notice. The Respondent in its letter (signed by its Nominee Director) denied the allegations of violation of Section 17 of the Ordinance in relation to the transactions between March 04, 2005 and March 16, 2005. The Respondent stated as follows:
- a. “As discussed Nazish (157) is our trader account, executing Purchase & Sale orders for their different clients i.e. one client is selling and other client of same trader purchasing at the same rate”.
 - b. “As discussed Imran (420) is our trader account, executing Purchase & Sale orders for their different clients i.e. one client is selling and other client of same trader purchasing at the same rate”.
 - c. “As discussed during our meeting that client code No.(189) stands in the name of Mr. Sultan Haji Suleman, Nominee Director of M.S. Securities (Pvt.) Limited, and the trading made on the specific dates as being mentioned in your notice were without any false/ misleading intention but were made on the basis of market speculation, that when he felt that market is depleting he ordered for sale of shares, simultaneously when market index return to positive sign / factor he ordered to buy back the shares on the same rate if possible, resulting in his own purchase & sale in the same rate, without change in the beneficial ownership”.
13. Having heard the views and contentions of the Respondent in its oral and written submissions and after carefully examining the facts, I found that the following issues arise out of this matter:
- (a) *Did the acts of commission and omission as alleged against Respondent constitute a breach of the Rules? If so, up to what extent?*
 - (b) *What should the order be?*

Each of these issues has been examined herein below:

(a) Did the acts of commission and omission as alleged against Respondent constitute a breach of the Rules? If so, up to what extent?

14. The Respondent admitted in its written and oral statement that it carried out all 11 trades annexed to the Notice. The Respondent accepted that in case of Mr. Sultan Haji Suleman the trades did not in fact result in change in beneficial ownership i.e. five trades in PTCL and OGDC.
15. We extracted and matched the transactions provided by the Respondent with those obtained by us from the KSE. On the basis of this examination we established the fact that the beneficial ownership did change in 3 trades of Client Code (157) and 3 trades of Client Code (420), as claimed by the Respondent. However, there was no change in beneficial ownership in 5 instances of Client Code (189) to which the Respondent also admitted.
16. In respect of the five trades where the beneficial ownership did not change the Respondent took the plea that the trades made were without any false/ misleading intention but were made on basis of market speculation, that when he felt that market is depleting he ordered for sale of shares, simultaneously when market index return to positive sign / factor he ordered to buy back the shares on the same rate if possible, resulting in his own purchase & sale in the same rate, without change in the beneficial ownership.
17. The above-mentioned plea does not hold merit because the purpose of placing a sell market order was to mitigate the risk posed by the open buy order in an extremely volatile market. Hence, I am of the view that the matching of the market order to sell with the open bid was not coincidental but intentional. This trade would not have occurred had the KATS operator been diligent and had cancelled the existing buy order in the KATS. As an experienced broker and as the employer of the KATS operator it was the duty of the Respondent to ensure that its business was conducted with due care and skill. By allowing such trades suggests lack of care on part of the broker because it failed to put proper system in place.

18. Further the Respondent in its oral statement in the hearing on August 23, 2005 admitted that the proper client codes are not entered in the system. It is the duty of the Respondent to exercise due care and skill while entering information into the KATS. By not entering the correct information in the client code field of the KATS, the Respondent has failed to carry out its responsibility to provide accurate information on the KATS.
19. From the preceding facts it is clear that the Respondent has failed to follow the requirements of the Code of Conduct prescribed in the Rules. The Respondent admitted through its letter dated August 24, 2005 that five such transactions were executed although unintentional.
20. The Respondent failed to maintain high level of integrity, promptitude and fairness in the conduct of its business and has in fact indulged in dishonorable, disgraceful and improper conduct on the stock exchange. The Respondent did not comply with the statutory requirements according to the Code of Conduct of the Rules. Therefore, the Respondent acted in violation of Rule 8(iv), read with Rule 12 of the Rules.

(b) What should the order be?

21. The Commission took a very serious note of non-appearance of the Respondent on the hearing date on August 10, 2005. However, the reasons given by the Respondent seems to be plausible and, therefore, we decided not to proceed further against the Respondent in this regard.
22. The Commission takes a serious note of the violation of the Rules and is entitled to suspend the Respondent's registration. In the present circumstances the Commission has decided not to exercise this power. However, in view of the fact that 5 trades consisting of 163,400 shares executed by the Respondent involve no change in beneficial ownership of shares. Therefore, in exercise of the powers under Rule 8(b) of the Rules, I hereby impose on the Respondent, the penalty of Rs. 25,000.00 (Rupees Twenty Five Thousand) which should be deposited with the Commission, no later than 30 (thirty) days from the date of this Order.

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division

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

(Imran Inayat Butt)

Director SM

Date of Order: 26th August 2005