



Before the Director (Securities Market Division)

In the matter of Show Cause Notice issued to

Kashif Rafiq Vohra Securities (Pvt.) Limited

Under Rule 8 read with Rule 12 of the Brokers and Agents Registration Rules, 2001

Number and Date of Notice	No. MSW/SMD/LSE/1(5)2006 dated November 01, 2007
Date of Hearing	November 22, 2007
Present at the Hearing:	Mr. Sammar Shahid – Accounts Manager Mr. Muhammad Aftab – Accounts Officer
Date of Order	January 25, 2008

ORDER

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1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. MSW/SMD/LSE/1(5)2006 dated November 01, 2007 (**the SCN**) issued to Kashif Rafiq Vohra Securities (Pvt.) Limited (**the Respondent**), member of the Lahore Stock Exchange (Guarantee) Limited (**LSE**) by the Securities and Exchange Commission of Pakistan (**the Commission**) under Rule 8 of the Brokers and Agents Registration Rules, 2001 (**the Brokers Rules**) for violation of Rule 12 of the Brokers Rules and Clause A5 of the Code of Conduct contained in the Third Schedule of the Brokers Rules.
 2. The brief facts of the case are that the Respondent is a member of LSE and is registered with the Commission under the Brokers Rules. An enquiry was initiated by the Commission in exercise of its powers under Section 21 of the Securities and Exchange Ordinance, 1969 (**the Ordinance**) and Ford Rhodes Sidat Hyder & Co. (**the Enquiry Officer**) was appointed as the Enquiry Officer under the above mentioned Section for the following:
 - (a) to enquire into the dealings, business or any transaction by the Respondent during the period from April 01, 2006 to June 15, 2006 (**the Review Period**)
 - (b) to identify any and all the acts or omissions constituting a violation of the Ordinance and the Rules made thereunder.
 - (c) to identify violations of any other applicable laws, including but not limited to the Brokers Rules, Regulations for Short Selling under Ready Market, 2002 (**Short Selling Regulations**).



General Rules and Regulations of LSE, Securities and Exchange Rules 1971 ("the 1971 Rules") and directives issued by the Commission from time to time.

3. The findings of the Enquiry Officer revealed several instances of potential non-compliances with applicable laws and regulations. A copy of the Enquiry Officer's report was sent to the Respondent on September 07, 2007 which required the Respondent to provide explanations on the observations of the Enquiry Officer together with supporting documents.

4. After perusal of the Respondent's replies to the above mentioned letter, which did not adequately explain the position in respect of some instances, the SCN was issued to the Respondent under Rule 8 of the Brokers Rules stating that the Respondent has prima facie contravened Rule 12 of the Brokers Rules read with Clause A5 of the Code of Conduct contained in the Third Schedule to the Brokers Rules which are reproduced as under:

Rule 12- "A broker holding a certificate of registration under these rules shall abide by the Code of Conduct specified in the Third Schedule".

Clause A5 of the Code of Conduct- "A broker shall abide by all the provisions of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) and the rules, regulations issued by the Commission and the stock exchange from time to time as may be applicable to him".

5. On November 01, 2007, the Respondent was called upon to show cause in writing within seven days and appear before the undersigned on November 13, 2007 for a hearing, to be attended either in person and/or through an authorized representative, however, on the Respondent's request hearing was re-fixed for November 22, 2007.

6. The hearing was attended by Mr. Sammar Shahid, Account Manager and Mr. Muhammad Afzal, Account Officer of the Respondent, who argued the case and also submitted written reply dated November 21, 2007 to the Commission.

7. A summary of the contentions and objections that were raised by the Respondent in its written submissions and during the hearing and findings and conclusions of the Commission on the same are as follows:

8. **Blank Sales** ("Issue No. 1")

8.1 In terms of Regulation 4 of the Short Selling Regulations, Blank Sales are not permissible and in terms of Regulation 5 of the Short Selling Regulations, it is provided that

"No Member shall make a Short Sale unless:

- a) Prior contractual borrowing arrangement has been made
- b) The sale is made at an uptick, and
- c) The trade is identified as a Short Sale at the time of placement of order"

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- 8.2 The findings of the Enquiry Officer revealed 557 instances of Blank Sales during the Review Period.
- 8.3 The Respondent made the following submissions on the issue:
- During the hearing the Respondent stated that the instances given in the Annexure – A (**the Annexure**) of the SON were not Blank Sales. The Respondent asserted that its clients had buy positions at Karachi Stock Exchange (Guarantee) Limited, deliveries in their CDC Accounts or had borrowing agreements as pre-existing interest against the sales mentioned in the Annexure. The Respondent as a proof of its claim provided a number of ledger statements of its clients for the scrips and dates mentioned in the Annexure along with CDC Account Balances Reports of the House Account for different dates.
- 8.4 I have considered the contents of the Respondent and the issues raised therein and the same are addressed by me below:
- A review of the said ledger statements provided by the Respondent and record available with the Commission showed that the instances mentioned at serial nos. 1-3, 8, 15-17, 281-285 and 352-358 of the Annexure were not Blank Sales as the clients either had Carryover position or prior buying positions. However, for rest of the cases the statement provided by the Respondent did not substantiate that the clients had any positions before sales. The Respondent did not provide any CDC Account Balance Report of clients' CDC Sub Accounts or Investor Accounts to show that they had deliveries of the shares. Moreover, no borrowing agreement as claimed by the Respondent was provided. In the absence of any evidence of pre-existing interest of the clients, it is evident that these remaining instances given in the Annexure are Blank Sales.
- 8.5 Considering the above facts and the contentions of the Respondent, it is clear that 538 Blank Sales have been made in violation of Regulation 4 of the Short Selling Regulations. In terms of Rule 8 of the Brokers Rules, sub-rule (ii) which the Commission is of the opinion that a broker has inter alia failed to comply with any requirements of the Act or the Ordinance or of any rules or directions made or given thereunder, in terms of sub-rule (iii) has contravened the rules and regulations of the exchange and in terms of sub-rule (iv) has failed to follow any requirement of the Code of Conduct laid down in the Third Schedule, the Commission may in the public interest, take action under Rule 8(a) or (b) of the Brokers Rules.
- 8.6 In light of the above i.e. the facts the Respondent by making Blank Sales has violated the Short Selling Regulations thereby attracting sub-rule (iii) of the Rule 8 of the Brokers Rule and has also failed to comply with Clause A5 of the Code of Conduct contained in the Third Schedule to the Brokers Rules, thereby, attracting sub-rule (iv) of the Rule 8 of the Brokers Rule. Accordingly, a penalty of Rs. 75,000



(Rupees Seventy Five Thousand only) is hereby imposed on the Respondent under Rule 8 (b) of the Brokers Rules.

9. **Account Opening Form (Issue No. 2)**

9.1 In terms of Commission's Directive No. SMD/SE/2(89) 2003 dated July 23, 2003 which requires all the members-brokers to maintain Account Opening Form(s) (**the AOF(s)**) in conformity with the Standardized Account Opening Form (**the SAOF**) prescribed by the Commission and subsequent changes made to the SAOF vide letters No. SMD/SE 2(89) 2003, dated November 19, 2003 and January 20, 2004. Subsequently this SAOF was also made part of SE General Rules and Regulations as Chapter VIII. The said directives of the Commission require that:

- i) List of Transaction fee, commission to be charged by the Broker and other CDC charges to be levied should be attached with the AOFs.
- ii) Margin to be maintained by client must be mentioned on AOF.
- iii) Each page of the AOFs should be signed by the broker or its authorized representative.

9.2 Findings of the Enquiry Officer revealed that:

- i) List of Transaction fee, commission to be charged by the Respondent and other CDC charges to be levied was not attached with the AOFs.
- ii) Margins to be maintained by clients were not mentioned on AOFs.
- iii) Each page of the AOFs was not signed by the Respondent or its authorized representative.

9.3 The Respondent made the following submission on this issue:

- In its earlier reply dated September 24, 2007 to the Enquiry Report, the Respondent stated that commission slabs are given to the clients through Ledger Statements which are sent weekly. However, during the hearing the Respondent stated that list of transaction fee is attached with the AOFs and the same were provided to the Enquiry Officer. However, the Respondent did not provide any document in support of its claim that list of transaction fee was attached with AOFs.
- With regard to the violation of not mentioning margin deposit percentage to be maintained by the clients on the AOFs, the Respondent in its reply dated September 24, 2007 to the Enquiry Report stated that mentioning the margin deposit percentage on the AOFs is not compulsory, therefore, it did not mention the same on the AOFs. However, during the hearing the Respondent stated that margin deposit percentage is mentioned on the AOFs, but no documentary evidence in support of its claim was provided.



- With regard to violation of missing signature of Respondent on each page of AOFs, the Respondent agreed to the same and confirmed that it has already taken corrective actions and is now complying with the requirements of the SAOF.

9.4 I have considered the contentions of the Respondent and the issues raised therein and the same are addressed by me below:

- I have considered the contentions of the Respondent regarding missing list of charges with AOFs and do not agree with the Respondent that giving commission rates on the account statement/trade confirmation suffices the requirement of attaching the list of charges with the AOF. It may be noted that enclosing the list of charges with the AOF makes it part of the AOF which is the basic document between the broker and his clients. In case of any dispute arises between them all the matters are resolved on the basis of clauses of the AOF. Therefore, by not attaching the said list with the AOFs, the Respondent has failed to comply with the abovementioned directives of the Commission.
- With regard to the Respondent's assertion about not mentioning margin deposit percentage on AOFs, it is clear that the Respondent is not complying with the requirements of the SAOF. It may be noted that SAOF requires that percentage of margin deposit should be mentioned on the AOFs. Further, SAOF also requires that each and every field of the AOFs should be duly filled in. Since writing of percentage of margin deposit is not optional as per the SAOF, therefore, by not mentioning percentage of margin deposit on AOFs, the Respondent has violated the abovementioned directives of the Commission.
- With regard to Respondent's assertion about the missing signature of the Respondent or its authorized representative on each page of AOFs, it is clear that the Respondent has accepted the omission. However, the Respondent has stated that it has rectified the errors.

9.5 Considering the above facts and the contentions of the Respondent, it is established that the Respondent has failed to comply with Commission's directive and General Rules and Regulations of the LSE. In terms of Rule 8 of the Brokers Rules, more particularly sub rule (iii), (iv) and sub rule (v) therefore, where the Commission is of the opinion that a broker has inter alia failed to comply with any requirements of the any directions of the Commission and/or has contravened the rules and regulations of the Exchange and/or has failed to follow any requirement of the Code of Conduct laid down in the Third Schedule, it may in the public interest, take action under Rule 8(a) or (b) of the Brokers Rules.

9.6 In light of the above i.e. the fact the Respondent failed to comply with Commission's directives thereby attracting sub rule (v) of the Rule 8 of the Brokers Rule. However, based on the Respondent's statement that it has already taken corrective actions and assured the Commission that such violations will not occur in future I am inclined, on this occasion, to take a lenient view in the matter and will not take any

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punitive action under Rule 8 of the Brokers Rules. As such, I believe a 'caution' in this instance to the Respondent would suffice and I would further direct the Respondent to ensure that full compliance be made of all rules, regulations and directives of the Commission in the future for avoiding any punitive action under the law.

10. **Separate Bank Account for Clients Funds ("Issue No. 3")**

10.1 In terms of Commission's directive No. SMD/SE 2(20)/2002 dated March 4, 2005 which states that:

"The exchanges are to ensure that brokers follow the practice of segregating clients' assets from the broker's assets in order to ensure that clients' assets are not misused

For this purpose brokers should have one separate bank account which includes all the cash deposits of their clients along with records/break-down of client positions."

10.2 The findings of the Enquiry Officer revealed that the Respondent was not maintaining a separate bank account for its clients' funds.

10.3 The Respondent made the following submission on the aforementioned issue:

- The Respondent during the hearing agreed that it was not maintaining a separate bank account for its clients' funds. However, now it is complying with the said requirement of the Commission's directive.

10.4 I have considered the contentions of the Respondent and it is clear that the Respondent has failed to comply with the Commission's directive No. SMD/SE 2(20)/2002 dated March 4, 2005. The said directive requires the members to maintain one separate bank account in which only the clients' funds are to be placed in order to stop the members from using clients' funds for their own purposes.

10.5 Considering the above mentioned fact I am inclined, on this occasion, to take a lenient view in the matter and will not take any punitive action under Rule 8 of the Brokers Rules. As such, I believe that a caution in this instance to the Respondent would suffice and I would further direct the Respondent to ensure that full compliance is made of all the laws, regulations and directives of the Commission in future for avoiding any punitive action under the law.

11. **Title of Proprietary Accounts did not contain the word "Proprietary" ("Issue No. 4")**

11.1 AND WHEREAS, regulation 8 (i) of The Regulations for Proprietary Trading, 2004 states that:

"Separate Account for Proprietary Trading: - Every broker who engages in proprietary trading shall have a separate account. The account shall be in the name of the broker, agent or an associated person and the title of the account must contain the word "proprietary". The account(s) shall be used for all transactions involving proprietary trade."



- 11.2 AND WHEREAS, the findings of the Enquiry Officer revealed that title of proprietary accounts did not contain the word "Proprietary".
- 11.3 The Respondent made the following submission on the abovementioned issue:
- The Respondent during the hearing acknowledged the said violation and stated that it was not aware of the abovementioned requirement of the Regulations. However, it assured that the said violation will be corrected soon.
- 11.4 I have considered the contentions of the Respondent and it is clear that the Respondent has failed to comply with the regulation 8 (iii) of The Regulations for Proprietary Trading, 2004.
- 11.5 Considering the above-mentioned fact I am inclined, on this occasion, to take a lenient view in the matter and will not take any punitive action under Rule 8 of the Brokers Rules. As such, I believe that a caution in this instance to the Respondent would suffice and I would further direct the Respondent to ensure that full compliance is made of all the laws, regulations and directives of the Commission in future for avoiding any punitive action under the law.
12. As stated above, the Respondent is penalized as follows:
- a) As regards Issue No.1 as stated above, a penalty of Rs. 75,000/- (Rupees Seventy Five Thousand only) is imposed.
 - b) No punitive action is taken in relation to Issue No. 2, 3 and 4 and a simple caution will suffice.
- 12.1 The matter is disposed of in the above manner and the Respondent is directed to deposit the fine with the Commission not later than fifteen (15) days from the receipt of this Order.

Imran Inayat Butt
Director (SM)
Securities Market Division