



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SECURITIES MARKET DIVISION

Before the Executive Director (Securities Market Division)

In the matter of Show Cause Notice issued to

Muhammad Munir Muhammad Ahmad Khanani Securities (Private) Limited

Under Rule 8 read with Rule 12 of the Brokers and Agents Registration Rules, 2001 ("the Brokers Rules") and Section 28 of the Central Depositories Act, 1997 (the CDC Act)

Number and date of Notice	SMD-SOUTH/SCN/118/07 dated August 24, 2007
Date of hearing	September 10, 2007
Present	Mr. M. Munir M. Khanani-CEO
Date of Order	October 30, 2007

ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice SMD-SOUTH/SCN/118/07 dated August 24, 2007 ("**Show Cause Notice**") issued to **Muhammad Munir Muhammad Ahmad Khanani Securities (Private) Limited** (the "**Respondent**") by the Securities and Exchange Commission of Pakistan (the "**Commission**") under Rule 8 of 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 to the Brokers Rules and under section 28 of the CDC Act.
2. Brief facts of the case are that the Respondent is a member of the Karachi Stock Exchange (Guarantee) Limited (the "**Exchange**") 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 ("**1969 Ordinance**") and KPMG Taseer Hadi & Co. ("**the Enquiry Officer**") was appointed as the Enquiry Officer under the above mentioned section inter alia:
 - a) to enquire into the dealings, business or any transaction by the Respondent during the period from April 1, 2006 to June 15, 2006 ("**the Review Period**");
 - b) to identify any and all the acts or omissions constituting the violation of the 1969 Ordinance and the Rules made thereunder; and

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- c) to identify violations of any other applicable laws, including but not limited to the Brokers Rules and Regulations for Short Selling under Ready Market, 2002 ("**2002 Regulations**") and The Central Depository Company of Pakistan Limited Regulations ("**CDC Regulations**") read with the CDC Act.
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 under cover of a letter dated May 25, 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, a Show Cause Notice was issued to the Respondent under Rule 8 of the Brokers Rules and under section 28 of the CDC Act, 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 and requirements of the CDC Act. Rule 12 of the Brokers Rule and clause A5 of the code of conduct are reproduced as under:
- Rule 12-** " A broker holding a certificate of registration under this 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 Act and the rules, regulations issued by the Commission and the stock exchange from time to time as may be applicable to them".
5. The Respondent was called upon to show cause in writing within seven days and appear before the Executive Director (SMD-South) on September 10, 2007 for a hearing, to be attended either in person and/or through an authorized representative.
6. The hearing was held on September 10, 2007 which was attended by Mr. M. Munir M. Khanani who submitted a written reply and argued the case.
7. A summary of the contentions that were raised by the Respondent in the written submission / during the hearing and findings and conclusion of the Commission on the same are as follows:



8. Blank Sales

8.1 In terms of Regulation 4 of the 2002 Regulations blank sales are not permissible. The findings of the Enquiry Officer revealed 616 instances of blank sales during the Review Period.

8.2 The Respondent made the following submissions on this Issue ("**Issue No. 1**"):

- The Respondent contended that majority of these instances pertained to a customer whose account was closed by the Respondent as soon as it became aware of the blank sales.
- The Respondent further contended that whenever any violations of applicable laws and regulations have been identified, the Respondent has taken corrective measures and reported the matter immediately to the Exchange.
- The Respondent further contended that some of its clients had pre-existing interest at the time of sale in their respective CDC Investor accounts. In respect of other clients, the Respondent pleaded that their blank sales were not material.
- The Respondent further submitted that it has a large turnover which made it difficult to completely prevent the instances of blank sales during the Review Period. The Respondent also submitted that it has now implemented a risk management system which would enable it to prevent occurrence of blank sales in future.

8.3 I have considered the contentions of the Respondent and the same are addressed by me below:

- It is the obligation of a brokerage house to ensure compliance with all applicable rules and regulations and appropriate internal control procedures need to be in place to prevent a customer from making a sale without holding pre-existing interest. As such the large volume of business or number of clients could not be held as a valid excuse for non-compliance or violation of any applicable laws and regulations.
- With respect to the Respondent's claim that some of its clients had pre-existing interest, satisfactory evidences were not submitted in support of this claim.
- Further, even if the isolated instances of the blank sales appear immaterial, when taken collectively, they distort the fair trading pattern and efficient functioning of the market and thereby damage the public interest. Hence the contentions of the Respondent in this regard cannot be accepted.



- 8.4 Considering the above facts and the contentions of the Respondent, it is established that on 616 occasions blank sales have been made in violation of Regulation 4 of the 2002 Regulations. In terms of Rule 8 of the Brokers Rules, more particularly sub rule (ii), sub rule (iii) and sub rule (iv) thereof, where the Commission is of the opinion that a broker has inter alia failed to comply with any requirements of the Securities & Exchange Commission of Pakistan Act, 1997 or the 1969 Ordinance or of any rules or direction made or given thereunder 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.
- 8.5 In light of the above i.e. the fact that the Respondent made blank sales, the Respondent has violated the 2002 Regulations thereby attracting sub rule (iii) of Rule 8 of the Brokers Rules 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 Rule 8 of the Brokers Rules. 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. Order Register

- 9.1 In terms of Rule 4(1) of the Securities and Exchange Rules 1971 ("**1971 Rules**"), it is provided that:

"All orders to buy or sell securities which a member may receive shall be entered, in the chronological order, in a register to be maintained by him in a form which shows the name and address of the person who placed the order, name and number of the securities to be bought or sold, the nature of transaction and the limitation, if any, as to the price of the securities or the period for which the order is to be valid."

- 9.2 Findings of the Enquiry Officer revealed that the register as mentioned above was not maintained by the Respondent during the Review Period.
- 9.3 The Respondent made the following submission on this Issue ("**Issue No. 2**"):
- The Respondent contended that the register as required is maintained through the messaging system, as part of its risk management system.



- 9.4 I have considered the contention of the Respondent and am of the view that the messaging system as described by the Respondent is not a substitute for the Order Register as required under the Rule 4(1) of the 1971 Rules, since the said system only records those orders that are placed by the brokerage house into KATS and not the orders received from the clients.
- 9.5 The Commission is however cognizant of the practical difficulties associated with the maintenance of such an Order Register manually and in order to facilitate the brokerage houses in meeting the requirements of the said rule, the Exchange is developing a system which will be provided in due course. However, it is noted with disappointment that the brokerage houses and exchanges were not able to keep pace with evolution in technology and significant increase in trading activities whereby a system should have been developed to enable simultaneous recording of orders received from clients and their incorporation in a database to generate the order register as required under the requirements of the Rule 4(1) of the 1971 Rules.
- 9.6 Considering the above mentioned facts 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 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 rules / regulations in future for avoiding any punitive action under the law

10. Book entry securities of different customers held in a single CDC-sub account

- 10.1 In terms of Section 2(27) of CDC Act 1997, the term "sub-account" has been defined as:

"sub-account " means a sub-account maintained, as part of the account of a participant, in accordance with the regulations by a central depository in the name of a sub-account holder so as to record the title of the sub-account holder to any book-entry securities entered in such sub-account.

- 10.2 Findings of the Enquiry Officer revealed that Book-entry Securities beneficially owned by different customers were kept in a single CDC sub-account opened in the name of a certain customer in violation of the above Section 2 (27) of the CDC Act.

- 10.3 The Respondent made the following submission on this Issue ("**Issue No. 3**"):



- The Respondent admitted that the above mentioned violation occurred due to ignorance of the relevant regulatory requirements and that the Respondent has since corrected its practice and opened CDC sub- accounts for all of its customers.

- 10.4 I have considered the contention of the Respondent and am of the view that CDC accounts are opened to establish the title and beneficial ownership of the shares and keeping the shares of clients in a CDC sub-account opened in the name of another customer is a serious violation of the CDC Act, as it results in the change in the beneficial ownership of the shares. Furthermore, ignorance of law cannot be an excuse for non-compliance with applicable laws and regulations
- 10.5 Considering the above mentioned facts, it is established that the Respondent has violated the Section 2(27) of CDC Act 1997. In terms of Section 28 read with Section 3 of the CDC Act, it is provided that the Commission can impose a penalty for contravention or an attempt to contravene any provision of the CDC Act or CDC Regulations.
- 10.6 Since by keeping the book entry securities of different clients in a single CDC sub-account opened in the name of another client, the Respondent has violated Section 2(27) of CDC Act 1997, I am of the view that a penalty of Rs.25,000 (Rupees Twenty Five Thousand) be imposed on the Respondent
11. In view of what has been discussed above, I am of the considered view that no punitive action is necessary in relation to Issue No. 2 and a simple caution will suffice. As regards Issues No. 1 and 3 as stated above, penalties of Rs. 75,000 (Rupees Seventy Five Thousand) and 25,000 (Rupees Twenty Five Thousand) are imposed respectively, which should be deposited with the Commission not later than fifteen (15) days from the date of receipt of this Order.



Zafar Abdullah
Executive Director
Securities Market Division