



Securities and Exchange Commission of Pakistan
Securities Market Division

Before The Director / HOD (Market Supervision & Capital Issue Department)

in the matter of Show Cause Notice issued to

Mr. Asim Murtaza Khan, Mr. Moin Raza Khan and Mr. Kamran Wahab Khan

under Section 15E (3) of the Securities and Exchange Ordinance, 1969

Date of Hearing:

October 23, 2012

Present at Hearing:

(i) *Mr. Asim Murtaza Khan*

*Chief Executive Officer,
Pakistan Petroleum Provident Fund
Trust Company (Pvt.) Limited
("PPPFTCL")*

(ii) *Mr. Kamran Wahab Khan*

Director, PPPFTCL

(iii) *Mr. Maudood Ahmad Khan*

Jt. Senior Partner, Orr Dignam & Co

(iv) *Mr. Taha Alizai*

Partner, Orr Dignam & Co

Assisting the Director / HOD (MSCID)

(i) *Mr. Osman Syed*

Deputy Director, SECP

1. This order shall dispose of the proceedings initiated through Show Cause Notice No. 1(4)INS/MSW/SMD/2012/PPL-01 dated September 19, 2012 ("**SCN**") issued by the Securities and Exchange Commission of Pakistan ("**the Commission**") under Section 15E(3) of the Securities and Exchange Ordinance, 1969 ("**Ordinance**") to Mr. Asim Murtaza Khan ("**AMK**"), Mr. Moin Raza Khan ("**MRK**") and Mr. Kamran Wahab Khan ("**KWK**") ("**the Respondents**").
2. The Pakistan Petroleum Provident Fund Trust Company (Pvt.) Limited is a private limited company which manages the followings funds of the employees of the Pakistan Petroleum Limited:

S. No.	Name of the Funds
1	Executive Staff Pension Fund
2	Non-Executive Staff Pension Fund
3	Executive Staff Gratuity Fund
4	Non-Executive Staff Gratuity Fund
5	Senior Provident Fund
6	Junior Provident Fund



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The management of funds is governed by its Trust Deed and the Rules made thereunder and the members / beneficiaries of the funds are the employees of Pakistan Petroleum Limited (“PPL”).

3. Through its notice dated August 6, 2012 addressed to the three stock exchanges, PPL informed that the meeting of Board of Directors (“BOD”) of PPL has been rescheduled and it will be held on August 11, 2012 to consider the Annual Accounts of the Company for the year ended June 30, 2012. Subsequently, on August 13, 2012 PPL announced the financial results for the year ended June 30, 2012 wherein it announced Earning Per Share (“EPS”) of Rs. 31.13 over last year EPS of Rs. 23.92. The PPL also announced final Cash Dividend of 65% in addition to Bonus Shares of 25%.
4. The perusal of Ready Market trading data of Karachi Stock Exchange Limited (“KSE”) from August 07, 2012 to August 09, 2012, transpired that Pakistan Petroleum Limited Senior Provident Fund (“Fund”) managed by Pakistan Petroleum Provident Fund Trust Company (Pvt.) Limited (“PPPFTCL”) bought 662,500 shares of PPL through KASB Securities Limited, broker of KSE. The buying by PPFTCL constitutes about 18 % of the total volume in the scrip during the aforesaid period.
5. Keeping in view the above, the matter was taken up with PPL vide letter dated August 17, 2012. In this regard, PPL vide its letter dated August 31, 2012 submitted reply along with supporting documents. The review of documents provided by PPL revealed that Board of Trustees of the Fund consists of members of senior management of PPL including the Chief Executive Officer (“CEO”) of the Board of Trustees of the Fund, Mr. Asim Murtaza Khan, who is serving as Managing Director/CEO on the BOD of PPL at the time of purchase of aforementioned shares by the PPPFTCL. The detail of Board of Trustees of the Fund is given below :

Pakistan Petroleum Provident Fund Trust Company (Pvt.) Limited / Pakistan Petroleum Limited Senior Provident Fund	Position in PPL
Mr. Asim Murtaza Khan Chief Executive Officer	Managing Director/CEO
Mr. Moin Raza Khan Director	Deputy Managing Director
Mr. Kamran Wahab Khan Director	General Manager (Finance)/CFO

6. PPL vide aforementioned letter informed this office that the decision for purchase and sale of shares on behalf of the Fund was made by the Board of Trustees who authorized Secretary of Pakistan PPPFTCL as focal person for liaison with KASB Securities Limited for taking requisite steps for successful execution of transaction.
7. From the aforesaid, *prima facie*, it appeared that the Respondents had prior information regarding the financial results of PPL for the year ended June 30, 2012 by virtue of their



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positions in PPL. The information, regarding financial results of PPL was inside information as same was not available publically before its dissemination on August 13, 2012. It appeared from the facts of the subject case that the Respondents as insiders passed on/disclosed the material information regarding financial results of PPL to the Fund. The Fund using the said information purchased the aforementioned shares of PPL just before the announcement of financial results of PPL. Therefore, SCN was issued to the Respondents as to why action should not be taken against them under section 15E(3) of the Ordinance for passing on / disclosing of financial results of PPL before its public dissemination. The Respondents were required to submit their written reply to the SCN within ten days of the SCN and appear before the undersigned on October 11, 2012 for hearing in the matter.

8. In response to the SCN, M/s Orr Dignam & Co Advocates (“**the Legal Counsel**”) vide letter no. T/ZA/OR/310 dated September 27, 2012 informed that they have been engaged by the Respondents to file reply and appear on their behalf in the matter of the SCN. Moreover, the Legal Counsel also requested for extension in the date of submission of written reply till October 11, 2012 and date of hearing afterwards.
9. The aforementioned request of the Legal Counsel was acceded to vide letter No. 1(4)INS/MSW/SMD/2012/PPL-03 dated October 05, 2012 in the interest of justice and they were required to submit written reply to the SCN by October 11, 2012. The Legal Counsel submitted its written reply to the SCN vide letter no. AK/T/OR/371 dated October 10, 2012.
10. Subsequently, vide letter no. 1(4)INS/MSW/SMD/2012/PPL-04 dated October 12, 2012 the date of hearing was fixed for October 23, 2012. On the date of hearing Mr. Taha Alizai and Mr. Maudood Ahmad Khan, Partners of Orr Dignam & Co appeared on behalf of the Respondent. Moreover, Legal Counsel was also accompanied by Mr. Asim Murtaza Khan and Mr. Kamran Wahab Khan. The Legal Counsel argued that SCN is ex facie misconceived as the same has been issued to the Trustees in their capacities as Managing Director (AMK), Deputy Managing Director (MRK) and Chief Financial Officer (KWK) of Pakistan Petroleum Limited (PPL) whereas they did not provide any inside information to the Fund or any other persons in their said capacities. The assertions made by the Legal Counsel in its written reply and during the course of hearing are summarized as under:

*i. In the first quarter of 2012, the Government of Pakistan (“**GOP**”) was planning to offer PPL shares for sale to public through Secondary Public Offering (“**SPO**”). The Pakistan Petroleum Employee Benefit Funds (“**PPL Funds**”) were eligible to participate in the SPO. Accordingly, the Investment Committee and subsequently, the Trustees of the Fund Company in their meeting held on January 24, 2012 decided to invest around Rs 735 million of various PPL Funds in PPL’s SPO. However, as the SPO transaction did not materialize, therefore, investment in PPL shares through the open market was considered. Accordingly, as per the Investment Policy of the Fund Company, the Investment Committee*



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("Investment Committee") approved the investment in PPL shares by the PPL Senior Provident Fund ("PPL-SPF"), which was also approved by the Trustees. Accordingly, the PPL-SPF purchased 662,500 shares of PPL during the period August 7 to 9, 2012.

- ii. All long term investments of the Fund Company are approved by the Investment Committee. The Investment Committee comprises of four individuals i.e. the Senior Manager Corporate Finance (SMCF), General Manager Finance (GMF), General Manager Corporate Services (GMCS), and Deputy Managing Director (DMD) of PPL. Based on the approval and recommendation of the Investment Committee, the Trustees of the Fund Company approved the investment. If any single member of the Investment Committee disapproves the investment proposal, the same is not carried forward.*
- iii. The purchase of PPL shares by the PPL-SPF was made based on it being a sound long term investment for the benefit of its 965 members. The PPL Funds are not engaged in regular trading of shares. In this respect, it may be noted that the Fund Company purchased 136,078 shares of the Oil & Gas Development Company (OGDC) in the year 2003 which are still held by it. These were purchased at a price of Rs. 32.01 per share. Their current market value is Rs. 182.91 per share (as at October 2, 2012). Accordingly, the Fund Company is not engaged in short term profit making as is evident from the fact that the shares purchased in the year 2003 are still held by the PPL Funds. Further, holding shares for the long term is not always a guarantee of high returns as there is always a chance of sustaining loss on the market value due to volatility of the stock market.*
- iv. It is common knowledge that PPL is among the highly successful listed companies with a proven track record of success with significant profit and dividend declaration on an annual basis. Review of past results of PPL shows that no particular expertise is involved in predicting the financial success of PPL based on its past records alone. PPL has a history of paying out more than 100% cash dividend in addition to up to 20% bonus share issue. It is for this reason that the shares of PPL are regarded as a safe investment by several pension and employee funds. Hence no inside information is required to take a decision to invest in shares of PPL, given the consistently high profitability of PPL proven over a period of time. Investment by a fund in PPL shares is considered a sound investment with a virtual guarantee of profit / return based on the historical record. Hence, the decision of the Investment Committee and the Trustees to invest in PPL shares was neither sudden nor unusual nor based on inside information.*
- v. The quarterly accounts of listed companies are published within one month of the close of the accounting period. Accordingly, all material information*



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of PPL for the nine months period ended 31 March, 2012 was in the knowledge of the general public and the shareholders. An analysis of the past nine months (upto March, 2012) results of PPL reveals that the average quarterly EPS for that period was Rs. 8.18 per share as compared to the actual EPS of Rs. 6.58 per share for the last quarter of the financial year ended June 30, 2012. This is clearly indicative of the fact that the decision by the Fund Company to invest in PPL shares was not based on inside information otherwise the investment in PPL shares by PPL-SPF, might not have been made, as the EPS for the last quarter was lower than the average EPS of previous three quarters (up to March, 2012).

- vi. The factual position belies any allegation of inside information being used since the closing share price of PPL's share was Rs. 194.01 per share as on July 24, 2012 whereas during the period August 7 to August 9, 2012 (when the purchases were made), the share price was between Rs. 200.07 to Rs. 206.70 per share. If short term profit making would have been the objective of the PPL-SPF, then the PPL shares would have been purchased much earlier when the share price was below Rs. 195 per share. Hence, this is again indicative of the fact that there was no inside information involved in relation to the decision.
- vii. Moreover, stockbrokers, investment advisors, financial analysts and the Pakistan press and media project the annual performance and anticipate financial results of listed companies including PPL. These are ordinarily very close to the actual results when announced. The annual results of PPL including the EPS happened to be in line with the market expectations due to this reason. All the information that could affect the market price of the shares of PPL was already in the public knowledge and accessible to any interested person. The information regarding the expected final cash payout along with issue of bonus shares was publicly available in the research reports of various financial analysts and brokerage houses and was also published in the Daily Business Recorder on July 26, 2012. Most of the key research analysts predicted that PPL would pay a cash dividend of Rs 7 per share, along with a 10% - 15% bonus issue and strongly recommended purchase of PPL shares. In fact, the final cash dividend announced was lower than predicted. Accordingly, had inside information been relied upon, the investment may not have been made.
- viii. PPL has six funds of pension, gratuity and provident fund for its executive and non-executive staff having a fund size of more than Rs 6 billion. However, despite the huge fund size, the investment in PPL Shares of Rs 135.8 million was made, which is only 2% of the total size of the Funds.
- ix. The yearly allocation of interest to PPL-SPF members is made when the results of the Funds are finalized by the end of each financial year. In this respect, when the actual results of the Funds for the year ended June 30,



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2012 were calculated, it was revealed that the profit rate for allocation of interest to the PPL-SPF members had declined. Therefore, in order to arrest this decline in the rate of interest, other lucrative opportunities were explored and in view of this, it was decided that investment in PPL shares be made. It is pertinent to note that the average historic yield on investment in PPL shares has been 21.96% whereas the average 12 months KIBOR rate for the similar prior period was 12.97%. Accordingly, as the yield on PPL shares as compared to KIBOR was significantly higher, it was decided to invest Rs 135.8 million (based on available limit for investment in shares) in PPL shares. This was in line with the decision for investment of funds in PPL shares taken by the Trustees well before the corporate announcement.

- x. The investment was made solely for the beneficial ownership of the Fund i.e. for the benefit of all PPL-SPF members numbering 965, across the board and not for the benefit of any particular individual. Neither the Investment Committee nor the Board of Trustees had any personal interest in the transaction for the purchase of PPL shares. The decision was taken for the benefit of all the members of the Fund purely on the basis of historic returns of PPL.
- xi. It is not denied that the Fund Company bought the PPL shares during August 7 to 9, 2012. An analysis of the past nine months (upto March, 2012) results of PPL reveals that the average quarterly EPS for that period was Rs. 8.18 per share as compared to the actual EPS of Rs. 6.58 per share for the last quarter of the financial year ended June 30, 2012.
- xii. It is a fact that the Senior Officials of PPL are Trustees of the Fund Company, however, it is reiterated that AMK, MRK and KWK did not pass any inside information to the Fund Company or any other person. This is further confirmed by the fact that the share price was in fact higher when the investment was made and the EPS reduced in the last quarter.
- xiii. The Board of Trustees of the Fund had no prior information regarding the financial results of the year ended June 30, 2012 and the trading was not based upon any inside information. The decision to acquire shares of PPL was, in principle, taken as far back as January 24, 2012. Hence, when the SPO did not happen, it was decided to purchase PPL shares from the open market. Moreover the decision to acquire PPL shares was made based on the review of its past results. Therefore, no particular expertise is involved in predicting the financial success of PPL, since, based on the past records alone, PPL has a history of paying out more than 100% cash dividend in addition to up to 20% bonus share issue. Further, it is denied that the said information was 'inside information' since it was available publicly before its dissemination on August 13, 2012 as is evident from the media reports.
- xiv. Our Clients were not involved in any insider trading nor any of them



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provided any inside information or even rely on same in relation to the acquisition of PPL shares by the Fund Company. The mere fact that AMK, MRK and KWK are Senior Officials of PPL in of itself cannot be made the basis for concluding that these officials passed on or disclosed material information regarding the financial results of PPL to the Fund Company by virtue of their positions within PPL. The acquisition of shares by the Fund Company was made on the basis of consistent historical success of PPL as well as research reports of various financial analysts and brokerage houses and the Pakistani media projections of the anticipated financial results.

- xv. *It is specifically denied that the Fund Company, the Trustees or any of them have whether individually or collectively indulged in insider trading by passing on inside information. AMK, MRK and KWK are persons of great integrity and repute and have been associated with PPL for around 30 years, around 19 years (in two separate tenures) and around 18 years respectively. They cannot even contemplate such actions as are being alleged let alone being involved in same. Hence, it is denied that they have contravened the provisions of Section 15A of the Ordinance as they have not been involved in insider trading or any other violation of the Ordinance.*
- xvi. *Since our Clients have not indulged in insider trading nor passed any inside information, no action should be taken against them whether under Section 15E of the Ordinance or otherwise. Moreover, without prejudice to the above, neither has any gain been made or loss avoided by our Clients since if there is any benefit, it will be for all the employees of the PPL-SPF as part of a long term investment.*

11. During the hearing the Legal Counsel was asked to provide the following documents in support of their arguments:

- (a) Proposal of Investment Committee of PPFTCL dated January 12, 2012 relating to the proposed investment in the secondary public offer of PPL shares by Government of Pakistan.
- (b) Minutes of the meeting of the Trustees of the PPFTCL held on August 07, 2012 along with the proposal dated August 2, 2012 of the Investment Committee of PPFTCL relating to the investment of Rs. 135 million by the Fund for the purchase of PPL's shares.

The aforesaid documents were submitted by the Legal Counsel through letter dated October 24, 2012.

12. I have thoroughly analyzed and examined the facts, evidence and documents on record, in addition to the written replies to SCN and assertions made by the Legal Counsel during the hearing and my findings on the issues are as follows:



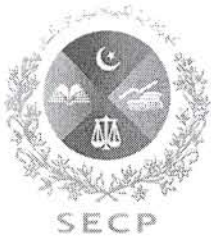
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- a. On review of the arguments made both in written and verbal form, it is noted that the Legal Counsel of the Respondent has admitted to a number of points, which were raised in the SCN. The Legal Counsel accepted that AMK, MRK and KWK are senior officials of the PPL and they may have access to inside information with respect to PPL, even so, they have not disclosed any inside information to the PPPFTCL and that the decision to invest in PPL's shares was made on the basis of recommendations of the Investment Committee of PPPFTCL. In this connection as stated in the SCN, Mr. Asim Murtaza Khan, Mr. Moin Raza Khan and Mr. Kamran Wahab Khan falls under the definition of Insider as defined under section 15C(1a) of the Ordinance as they were serving as Chief Executive/Managing Director, Deputy Managing Director and Chief Financial Officer/General Manager (Finance) of PPL respectively and were also Directors on the Board of PPPFTCL at the time of purchase of aforementioned shares by the PPPFTCL. However, on review of documents provided by the Legal Counsel it was also observed that the members of the Investment Committee of the PPPFTCL appears to be insiders with regard to PPL, being part of Finance Department and the other Departments of the PPL. The Investment Committee comprises of the following four individuals:
- i. the Senior Manager Corporate Finance (SMCF),
 - ii. General Manager Finance (GMF),
 - iii. General Manager Corporate Services (GMCS), and
 - iv. Deputy Managing Director (DMD) of PPL.

It is important to note that, based on the approval and recommendation of the Investment Committee, the Trustees of the Fund Company approved the investment in the shares of PPL. The above scenario gives rise to the possibility that the members of the Investment Committee being part of the Finance Department and other important Departments of PPL had directly obtained inside information regarding financial results of the PPL without the involvement of *AMK and MRK*. However, in case of KWK, he was also member of Investment Committee as well as Trustee of the Fund being Director of PPFTCL.

- b. The Legal Counsel in its written reply and during the course of hearing contended that the financial results of the Company were predictable with on the basis of past profit trends of the PPL. In support of their arguments, the Legal Counsel provided copies of Research Reports from different brokerage houses which were issued days before the announcement of financial results of the PPL on August 13, 2012. The review of Research Reports provided by the Legal Counsel showed that the analysts' expectation regarding final results of the Company were almost in line with the actual results. From perusal of the supporting documents there may be a possibility that the Investment Committee might have decided to purchase the PPL shares on the basis of expected results of the Company as recommended in the Research Reports. However, this argument is untenable on the basis of the fact that members of Investment



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Committee were insiders of the PPL themselves. It is a matter of fact that the Research Analyst of the referred Research Reports were only forecasting, estimating and predicting the financial results of the PPL and none of them was insider of PPL, but the CFO was actually aware of the financial results of the Company as he was custodian of the financial information and in possession of all the confidential and material information.

- c. During the hearing and in its written reply the Legal Counsel acknowledged that *AMK* and *KWK* were in possession of financial results of the PPL for the year ended June 30, 2012 in their capacity as Chief Executive/Managing Director and General Manager (Finance)/ Chief Financial Officer of PPL and had same level of information as other directors of PPL. However, they were not aware of the expected announcement for any pay-out (i.e. expected dividends and bonus to be announced) by the PPL. The decision regarding 65% Cash Dividend and 25% Bonus Shares was taken and approved by the BOD of the PPL during the BOD meetings which were held after the shares were purchased by the Funds. Further, the Legal Counsel during the hearing submitted that by end of 4th quarter, investors/brokers were aware that entire profit of the Company will be distributed. In this regard it is pertinent to note that during the first three quarters of the year ending June 30, 2012 PPL had already distributed almost majority of the profit earned by the Company. Moreover, similar payout pattern was observed in the preceding years, which shows that the PPL has a practice to distribute majority of its earnings. In this regard, we have reviewed the historical payout data of PPL and found that PPL has not offered Bonus Shares to the tune of 25% in recent previous years. It is important to distinguish that market participants were anticipating, speculating and guessing about the expected payout of PPL but senior management of the Company was privy of the actual cash position of the Company. They were aware that how much cash the Company can distribute to its shareholders and how much it has to retain for future expansion plan and exploration and operation activities of the Company. The view and opinion of the senior management to the Board of Directors regarding the payout and bonuses always carry weight and usually Board takes such decisions in accordance with the advice and opinion of the senior management of the company.
- d. From the aforementioned, it is clear that *AMK* and *KWK* were in possession of inside information regarding financial results of the Companies before the purchase of shares by the Fund. Having said that there is no evidence on record to substantiate transmission of information from *AMK* and *MRK* to the Investment Committee. Further as stated above the members of the Investment Committee of the PPPFTCL including *KWK* being part of the Finance and other important Departments of PPL, were also privy to inside information. Therefore, it is highly likely that the trading by the Fund in the shares of PPL was on the basis of inside information, regarding final results of the PPL, obtained directly by virtue of being member of Finance Department of PPL.



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- e. This argument is further substantiated by the fact that the Legal Counsel in its written reply and during the course of hearing stated that the members of Investment Committee independently took the decision to purchase the shares of the Company and recommended the same to the Trustees of the Fund. The Trustees of the Fund have constituted Investment Committee to manage investments expeditiously. In this regard, it may be noted that the review of the minutes of meeting of Board of Trustees of the PPPFTCL dated August 07, 2012, transpires that Investment Committee vide Note dated August 02, 2012 approved investment of Fund for purchase of PPL shares and forwarded the same to Trustees for their approval. The Legal Counsel also asserted that the members of Investment Committee are independent regarding their investment decisions. This shows that the investment decision making process at the PPPFTCL is entrusted to the members of Investment Committee. It may be noted that the Trust Deed of the Fund state that the funds are vested with the Trustees of the Fund, therefore, in spite of delegation of powers to Investment Committee, the Board of Trustees of the PPPFTCL are still responsible for the performance of the Fund and delegation of powers does not in any way absolve them from their duties and responsibilities as Trustees of the PPPFTCL.
- f. The examination of the subject case *vis-a-vis* the relevant provisions of the law reveals that all the three components of Section 15 of the Ordinance i.e. insider, inside information and insider trading are present in instance case . In the case in question, KWK is the insider, the financial results and payouts was inside information and the buying of PPL shares by the Fund on the basis of inside information just days before the announcement of financial result of the PPL constitute inside trading. The timing of the transactions by the Fund creates serious doubts about independency of their decision to buy the shares. Moreover, the Fund bought the shares during the 'Closed Period' which also indicates the dubious nature of the transactions. It is pertinent to mention here, that the sprit and rationale behind the announcement of Closed Period is to bar the insiders of the company to trade in the shares directly or indirectly
- g. From the facts of the case mentioned above, it is established that KWK, the member of the Investment Committee of PPPFTCL by virtue of being Head of the Finance Department of PPL i.e General Manager (Finance) / Chief Financial Officer, was insider person and due to his position in PPL had information regarding financial performance of the PPL. Further, the pattern of trading clearly establishes that the purchase of PPL shares by the Fund just prior to few days before the announcement of financial results of PPL, was based on inside information. Therefore, the case of insider trading against the PPPFTCL is established on the basis preponderance of evidence and material on record against the PPPFTCL.

13. In light of the above, I am of the view that the KWK being an insider, disclosed the inside information relating to financial results of PPL to the Fund which he possessed by virtue of his position in PPL; hence he is liable for penalty as defined in the Section 15E(3) of the Ordinance. I, hereby, in exercise of the powers under Section 15E(3) of the Ordinance,



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impose a penalty of Rs. 500,000 (Rupees five hundred thousand only) on the KWK, for passing on/disclosing of insider information to the Fund.

14. The matter is disposed of in the above manner and the KWK is directed to deposit the penalty as mentioned in paragraph above, in the account of the Commission being maintained in the designated branches of MCB Bank Limited not later than thirty (30) days from the date of this Order and furnish the copy of the deposit challan to the undersigned.
15. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent or any other person connected therewith in accordance with law on the matters subsequently investigated or otherwise brought to the knowledge of the Commission or on the same facts for violation of any other provision of the Ordinance.




Imran Inayat Butt
Director / HOD (MSCID)

Announced on *November 30, 2012*
Islamabad.