

Securities Market Division
Public Offering and Regulated Persons Department

No. 1(54)SMD/LCID/2015

July 25, 2016

Ms. Farah Zubair,
Chief Executive Officer,
Pearl Securities Limited
Suite No.204, 205, 2nd Floor,
Business and Finance Center,
Opp: State Bank of Pakistan, I. I. Chundrigar Road,
Karachi

Subject: Order in Respect of Show Cause Notice dated December 03, 2015 bearing No. 1(54)SMD/LCID/KSE-2015

Dear Sir,

Please find enclosed herewith a copy of order dated July 22, 2016 in the title matter for your record and necessary action.

Yours truly,

Muhammad Farcooq

Additional Director (PRPD)

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Before Executive Director (PRPD)

In the matter of Show Cause Notice issued under Section 22 of the Securities and Exchange Ordinance, 1969 to Pearl Securities Limited

Date of Hearing:

March 22, 2016,

Present at Hearing:

Representing the Respondents:

- (i) Mrs. Farah Zubair, Chief Executive, Pearl Securities Limited
- (ii) Mr. Ahsan Hashmi, Company secretary, Pearl Securities Limited

Assisting the Executive Director (PRPD)

- (i) Mr. Nasir Askar, Director (PRPD-SMD)
- (ii) Mr. Muhammad Farooq) Additional Director (PRPD-SMD
- (iii) Mr. Muhammad Tanveer Alam, Additional Director (SSED-SMD

ORDER

This Order shall dispose of the proceedings initiated through Show Cause Notice bearing No. 1(54) SMD/LCID/KSE-2015 dated December 3, 2015 ("Notice") served to Pearl Securities Limited ("Respondent") by the Securities and Exchange Commission of Pakistan ("Commission") under section 22 of the Securities and Exchange Ordinance, 1969 ("Ordinance"). The Respondent is Trading Right Entitlement Certificate Holder of Pakistan Stock Exchange Limited (formerly Karachi Stock Exchange Limited) ("PSX") and registered as a broker with the Commission under the Brokers Rules.

- 2. Vide order dated September 4, 2014, the Commission, in exercise of its powers under sub-section (1) of section 6 of the Ordinance read with rule 3 and rule 4 of the Stock Exchange Members (Inspection of Books and Record) Rules, 2001 ("Inspection Rules") ordered an inspection of, *inter alia*, the books and record of the Respondent covering the period from July 01, 2013 to June 30, 2014.
- 3. Before submission of its final report (**Inspection Report**), the Inspection Team shared its findings with the Respondent on January 30, 2015 in accordance with rule 7 of the Inspection Rules.
- 4. The Inspection Team observed that the Respondent was non-complaint with the regulatory framework including Securities and Exchange Rules, 1971 (SE Rules), PSX Rule Book, etc. In light of findings contained in the Inspection Report, the Commission served the Notice to the Respondent under section 22 of the Ordinance and the Respondent was called upon through its chief executive officer to show cause in writing as to why penalty may not be imposed under section 22 of the Ordinance. The chief executive officer of the Respondent, after seeking extension in time submitted his written response to the Notice on January 8, 2016.

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- 5. Before the matter could be concluded by the then Director/HOD (PRPD), I assumed the charge of the post of Executive Director (PRPD) and the instant case along with some other pending adjudication matters was passed on to the undersigned.
- 6. In order to conclude the proceedings, hearing in the matter was scheduled for March 22, 2016. On the given date Ms. Farah Zubair Chief Executive Officer and Mr. Ahsan Hashmi, Company Secretary of the Respondent (Authorized Representatives) appeared before me. The Inspection Team's findings and the arguments presented by the Authorized Representative thereon, in writing as well as verbally during the course of hearing, may be summarized as under:-
- (a) Calculation of Net Capital Balance (NCB):- The reported NCB of the Respondent as on June 30, 2014 was Rs. 360.904 million The Inspection Team observed that NCB of the Respondent was not calculated in accordance with Third Schedule to the SE Rules and observed the following irregularities in calculation of the NCB:-
- (i) **Trade Receivables:** The Respondent reported trade receivables of Rs. 2,269.876 million in its NCB as of June 30, 2014 whereas the Inspection Team observed that receivables amounting to Rs. 2,099.914 million were not eligible for inclusion in trade receivables as given below:

Code	Title	Debit Balance
1579	Creek Developers (Pvt) Ltd	266,926,027
1900	Pearl Securities Limited	17,044,025
POOL	Pool Account	6,369,875
H119	Shaukat Fayaz Ahmed Tarin	1,258,619,003
AP14/AP29	Husain Lawai - Escrow Account/ Qaiser Ali Khan	436,230,296
O57	First Capital Equities Ltd	114,725,475
	Total	2,099,914,701

The Inspection Team concluded that, instead of Rs. 2,269 million, trade receivables amounting Rs. 289.222 million only were eligible for inclusion in NCB.

In this regard, the Authorized Representative stated that

- The client Creek Developers is a trading account having UIN # 0052173 and CDC sub account # 26836. The amount was paid on the instructions of the client to acquire shares in the form of a lot, but the deal could not be materialized with seller and kept pending by seller of shares. The amount was returned by the client on 30-12-2014 as the seller was not willing to sell shares on buyer's rate.
- Amount of Rs.17, 044,025 pertains to the client WINCOM (Pvt.) Limited. Due to the
 dispute between the Respondent and WINCOM (Pvt.) Limited, the shares of WINCOM
 (Pvt.) Limited were moved to the Respondent House Account and the corresponding debit
 to these shares is appearing since June 2011 in an account known as 'Account 1900'.
- The amount of Rs.6,369,875/- pertains to payment by Respondent for book building of Pakistan Petroleum Limited. This payment was made on behalf of few clients of the

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Respondent. If point of view of inspection team is accepted, then the corresponding credit balance of the clients (that was deducted from the workings of net capital balance) would be needed to exclude from the workings of net capital balance, virtually having no impact on the Respondent's NCB.

It was informed to the Inspection Team that client Shaukat Fayaz Ahmed Tarin traded both in equity and money markets. The transactions which seemed to be financing arrangement' as claimed by the Inspection Team are the money market transactions and pertains to buying and selling of government securities as mentioned in detail in our letter dated December 23,, 2014. The Respondent is also member of PMEX and witnessed that working of net capital balance of PMEX includes the clients of other business segments i.e. equity. But altogether a different treatment is meted out while calculating NCB for equity market side. This discrepancy needs to be addressed and while determining NCB for equity; brokers should be allowed to include client balances of PMEX and money market.

In the inspection report, an impression is given that external auditors of Respondent were of the view that this account was a Repo account and not a trading account (as of June 30, 2013) which is totally against the facts. If amount pertaining to this trading account is not taken for the net capital balance purposes, then the Respondent is of the view that corresponding liability should also be excluded for calculating NCB and hence not affecting NCB.

- The account titled Mr. Hussain Lawai is a trading account opened by the client to trade in shares and government securities. The different receipts and payments in this account reflect payment to and from client and payments and receipts on instructions of client against his buying and selling in money market. With regard to transfer of balance it is hereby mentioned that this balance transfer took place on instruction of client. Moreover it is not necessary for the client's shares trading account reflect trading activity on every day. Likewise not every client is an active client, some clients place daily orders and some clients have limit orders which might be executed after months. In this client account trading activity could be seen during July 2014 as per client's order. The Inspection Team gave an impression that the external auditors of PSL were of the view that this account was a REPO account and not a trading account as of June 30, 2013 but fact of the matter is that if this was a position then why the auditors not insisted on this view while finalizing the Respondent's accounts as of June 30, 2014. The account of Mr. Hussain lawai was also treated as a client account even in the year 2012 by the auditors. Similarly on the same lines, if inspection team stance is accepted that the amount of this trading account should not be included for net capital balance calculations then we have a view that the corresponding liability should be excluded from the calculations of NCB as well thus having no impact on NCB.
- The balance in First Capital's account before June 19, 2014 reflected non settlement of equity trade by First capital Equities Limited. The amount of 106.428 million was received from the client on 19-06-2014. The amount of Rs. 106.459 was paid as per

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instruction of client. In this section, the inspection team gave an impression that external auditors of the Respondent was of the view that this account was a REPO account and not a trading account as of June 30, 2013 but if this stance is accepted then why the auditors not insisted in this view during finalization of accounts as of June 30, 2014. This account was also treated as a trading account in the year 2012 by the auditors. In our view, if the inspection team wants to go by its own interpretation to not to include this trading account for the net capital balance, we are of the view that the corresponding liability of account of net capital balance should also be excluded from the calculations of net capital balance as well.

(ii) Securities purchased for clients: The Inspection Team observed that the Respondent overstated its "securities purchased for clients" by Rs 130.170 million, as given below:

	PSL'S Working		Inspection Team's Working	
Item	Overdue > 14 days	Amount	Overdue >14 days	Amount
Sample	396,473,860	380,631,869	277,212,594	250,461,446
Other than Sample	47,476,651	36,639,262	47,476,651	36,639,262
Total	443,950,511	417,271,131	324,689,246	287,100,708

In this regard the Authorized Representatives contended that "the securities as mentioned below were not taken into account by the inspection team, while, these securities were available and could be verified from CDC and record is available. The inspection team did not quote any reason for non-inclusion of these securities;

Client name	Value of Securities	
Oaiser Ali Khan	527,909,040	
First Capital Equities	24,700,000	
Wincom	17,044,025	
	569,653,065	

At the same time, following two clients having credit balances in their other accounts which was not treated by the inspection team as for inclusion in NCB, which had a double impact in terms of calculation to the NCB as their credit balances also decreased NCB

Client name	Credit Balance
Sabira Qamar	1,373,229
Progressive investment	9,535,929
8	10,909,158

On the calculation of NCB, the Authorized Representative further stated that "the Respondent has a number of clients have trading accounts both for equity, money market, and FX and commodity market. SECP encourages business at PMEX, money markets but the NCB calculations interpretation by SECP discourages such participation into these markets by brokers. If SECP does not allow including the asset side of other businesses because the reason that it increases the net capital than SECP should also exclude the corresponding liability incurred, because of being participant in other business, and therefore, the NCB should not be reduced by such liability. The adjusted NCB, in our view, is not based on rationale and legal framework provided by Section 2(d) of the Securities and Exchange Rules, 1971".

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In order to conclude this important observation of Inspection, it would be appropriate to ascertain the basic purpose of NCB. The quintessence of NCB as prescribed in the SC Rules is to determine the admissibility and capacity of a brokerage house to conduct brokerage business. In order to assist the brokerage houses and their auditors in the calculation of NCB, the Commission has issued detailed guidelines and clarifications for the same. Keeping in view these guidelines and clarifications, the observations pointed out in the Inspection appears to be correct. However, the Respondent has a valid point which also needs to be discussed i.e. "the Respondent has a number of clients have trading accounts both for equity, money market, and FX and commodity market. SECP encourages business at PMEX, money markets but the NCB calculations interpretation by SECP discourages such participation into these markets by brokers. If SECP does not allow including the asset side of other businesses because the reason that it increases the net capital than SECP should also exclude the corresponding liability incurred, because of being participant in other business, and therefore, the NCB should not be reduced by such liability". The guidelines and clarifications issued by the Commission adequately address the treatment of assets relating to businesses other than stock brokerage business, however, the same are silent about the treatment of corresponding liabilities. In case of a brokerage house undertaking multiple types of brokerage businesses, NCB worked out in terms of prevalent frame work would always be debatable as its liabilities relating to businesses other than stock brokerage would be accounted for whereas corresponding assets would not be considered. In Respondent's case, inspection team had accounted for all the liabilities relating to businesses other than stock brokerage such as money market business etc. but did not include the corresponding assets. Resultantly, inspection team observed overstatement of NCB by Respondent amounting to Rs. 2,111 million. If these liabilities had also been disregarded as done in case of corresponding assets, the adjusted NCB might have been in line with the regulatory requirements. Considering the limitation of the prevalent framework to comprehensively address all the aspects of brokerage business, especially money market activities, it would not be justifiable to hold the Respondent responsible for alleged overstatement of NCB.

- Maintenance of books of accounts: Clause (a) of rule 8(1) of SE Rules read with (b) sub-section (1) of section 6 of the Ordinance requires that every member shall prepare and maintain books of account in a manner that would disclose a true, accurate and up-to-date position of its business. The Inspection Team, inter alia, observed the following instances where the said requirement not complied with:
- (i) Ledger account # H199 of Sheikh Muhammad Mubeen was adjusted against additional mark-up income. This resulted in reduction in income and receivables by Rs 142 million.
- (ii) The Respondent charged late payment and markup charges to the clients with different names like equity research provision, adjustment to client a/c as agreed, margin financing charges, etc in order to conceal the true nature of the amount being charged.
- (iii)In its annual account as of June 30, 2014, the Respondent showed an amount of Rs.73. 45 million as settlement charges. Review of the Respondent ledgers revealed that the amount was actually income from Margin Financing (in house). Further, the figure arrived by

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netting the amounts appearing under "mark-up earned" and "mark-up paid". The Inspection Team further observed that off-setting did not reflect the true position of the business. Further, offsetting is also disallowed as per International Accounting Standards I which states that "assets and liabilities, and income and expenses, may not be offset unless required or permitted by an IFRS"

In this regard, the Authorized Representatives stated that" the Books of Accounts were audited by the Respondent's statutory auditors and no qualifications were made by the auditor. It reflects that the Books of Accounts reflect true and fair view of the financial affairs at Respondent's for the mentioned period. The manner of presentation, grouping of accounts & transactions and interpretation could be different but nothing was concealed and all the transactions were fully disclosed. The offsetting mentioned by the Inspection team has been audited by our statutory auditor and no objections were raised as nature of transaction were such that offsetting income and expenses will have no bearing therefore, Respondent treated the transactions accordingly. Even the inspection team has not pointed out any default on part of the Respondent rather specified that the requirement was lacking. As the Inspection team has now raised this issue, the Respondent would not offset assets and liabilities and income and expenses until and unless required or permitted by an IFRS".

The Respondent has stated that it would not offset any assets/liabilities and income/expenses unless required and permitted by the accounting standards.

(c) Provisions of in-House Margin Financing: The Inspection Team observed that in violation of clause "a and b" of section 16 of Ordinance, the Respondent was providing In-House Margin Financing approximately at the rate of 18% to its clients through an exclusive agreement executed for period of one year and renewable on request of clients.

In this regard, the Respondent stated that "after June 30, 2014, we at PSL are making efforts continuously to decreasing the clients in-house positions and hence discouraging this practice for all times in capital markets in Pakistan. The PSL has stopped providing any financing from October 2014. Moreover, it can be witnessed that PSL share has increased in margin financing which now stands at Rs 227 million which was just Rs 7 million as on June 30, 2014....It is mentioned here that PSL is making efforts to shift all position of clients to margin financing immediately but due to technical obstacles in respect of requirement of fresh buying for entering into margin financing agreement as per scrip limitations slows down our switching to margin financing. We understand that the issue raised by Inspection Team is no more valid as we have discontinued the practice of financing by PSL from October 2014."

The Respondent has admitted that it was providing in-house margin financing in violation of section 16 of Ordinance. However, it has discontinued the same from October 2014.

(d) Availability of Research reports: The Inspection Team observed that in violation of clause 4.13(a) of Rule Book, the Respondent's research reports were available on its website, accessible by the general public, while as per regulatory framework, the research report can only be made available to clients.

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In this regard the Authorized Representative stated that "Regulation 4.13(a) of Rule Book encompasses many requirements to protect the interest of the clients and we understand that placing information on website of the Respondent is for existing and potential clients of PSL and it does not tantamount to general circulation as we are sending and circulating it to general public but our existing and potential clients can view and benefit from these reports. These reports are being not disseminated to unsolicited accounts and person, therefore, these are meant for our clients. However, since the Commission has interpreted with clarity, we have adopted the practice of disseminating it to our existing clients directly and would not be available on the Respondent's website. Therefore, the requirement stands complied with. SECP may visit our website and check compliance".

From the response of the Respondent it is evident that the Respondent was in violation of clause 4.13(a) of Rule Book. However, the Respondent has subsequently complied with the requirements by removing the reports from its website.

(e) Maintenance of a Standardized Account Opening Form ("SAOF"): As per regulation 4.17 of the PSX Rule Book, the brokers are required to adopt the Standardized Account Opening Form (SAOF) for all their account holders. Moreover, the brokers are required to incorporate any amendments in SAOF immediately for their new account holders and within 3 months for their existing account holder(s) within 3 months.

The inspection Team reviewed 13 SAOF and observed the following deficiencies:

- (i) The Respondent did not update/amend clause 7(b) and 8 of Special terms and conditions of SAOF.
- (ii) The Respondent did not sent addendum to existing account holders to bring their SAOF in conformity with the updated SAOF.

(iii) The following additional deficiencies were observed in the SAOF:

- All Pages were not signed by the account holder and broker
- CNIC of account holder was not attested
- Expired CNIC of main account holder was attached.
- Name of nominee was not mentioned.

In this regard, the Respondent stated that "the irregularities pointed out by the Inspection team are being removed and the concerned staff has been instructed to complete all formalities and ensure full compliance of the regulations pertaining to maintenance of SAOF".

From the above, it is evident that the Respondent was non-compliant with regulation 4.17 of the PSX Rule Book. However, the Respondent informed that the deficiencies pointed out by the Inspection Team have been removed and assured compliance with the regulatory framework in letter and spirit, in future.

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(f) Know Your Customer and Customer Due Diligence: Regulation 4.18 of PSX Rule Book requires brokers to formulate and implement an effective Know Your Customer (KYC) and Customer Due Diligence (CDD) policy and framework in accordance with the guidelines issued by PSX vide Notice No. KSE/N- 1388 dated March 16, 2012.

The Inspection Team sent a checklist containing requirements of KYC/CDD, as prescribed by PSX in its aforesaid guidelines the Respondent for filling in their compliance status and providing necessary supporting documents. The Inspection Team's observations on the filled checklist submitted by the Respondent are as under:

- (i) For sample SAOFs, risk profiling was not observed by the Inspection Team.
- (ii) The Respondent didn't have a system for regularly updating records of its clients.
- (iii) The Respondent itself acknowledged that it didn't have system for self-assessment of money laundering and terrorist financing risk as required under clause 4.3.
- (iv) System of monitoring of high risk clients and reporting of STRs was not in place.

The Authorized Representative stated that "the Respondent has Compliance and Risk Manual & KYC Policy and in the light of Inspection Team's proposal the Respondent is in the process of revising KYC and CDD Policy".

In view of the above discussions, the Respondent was non-compliant with the requirements of regulation 4.18 of the PSX Rule Book. However, the Respondent has informed that it was in the process of updating its policy in light of inspection observations.

- (g) Segregation of Clients' assets by the brokers: The Inspection Team observed the following instances with regard to segregation of clients' assets by Respondent:
- (a) of the PSX Rule Book, the Brokers are required to ensure that the assets belonging to their clients are kept separated from the assets of the Broker. For this purpose, the Brokers are required to maintain a separate bank account which would include the entire fund deposited/paid to their clients along with record/breakdown of clients' balances. Further, the guidelines issued by the Commission states that there should be no difference between clients' bank account and trade payables. The Inspection Team observed that the Respondent Clients bank accounts were reflecting debit balance of Rs. 30.30 million as on June 30, 2014 whereas, creditors balance on that date reflecting amount of Rs. 621.65 million. It was evident from the above that client's funds were not properly segregated.

In this regard, the Authorized Representative stated that "the Respondent has never used client's funds for its own purpose or interest except where legally permissible. The figure of Rs 621.56 million as quoted by Inspection Team includes loan accounts - the clients' payable as on June 30, 2014 is Rs.22.78 million (which was very clearly mentioned in NCB workings), whereas the clients' bank account had a balance of Rs.30.30 million. The Respondent is complying with the requirement; however, more care will be exercised in future in this regard".

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With regard to difference between balance in client's account and trade payables is concerned, the Respondent was non-compliant with the requirements of regulation 4.19.1 (a) of the PSX Rule Book read with the guidelines issued by the Commission. Further, the Respondent must ensure that balance of bank account or the balances of bank account(s) maintained for the said purpose should match and / or reconcile with the trade payables maintained in back office record (client level and overall basis).

(ii) Investment in listed Securities: The Inspection Team observed that the following shares of clients were lying in the house account of the Respondent:

Security Name	CDC Balance 30-06-2014	Client Name
Bank Alfalah Limited	7,649,000	Wincom (Private) Limted
First Capital Securities Corporation Ltd	10,000,000	First Capital Equities
Nib Bank Limited	14,000,000	Wincom (Private) Limted
Silk Bank Limited	102,000,000	Shaukat Fayaz Ahmed Tarir
Summit Bank Limited Preference Shares	50,404	Husain Lawai
AKD Capital Limited	200,000	Ejaz Hussain
Summit Bank Limited	24,300,000	Husain Lawai
	158,199,404	

In response the Authorized Representative stated that the "Respondent did not agree with the findings of inspection team on this point. During the inspection, we have disclosed properly to Inspection Team the fact that clients' shares are in house account and this fact was also disclosed in our annual audited accounts 2013-14 vide note # 28 and in audited annual accounts 2012-13 vide note # 22 to the accounts. We have moved these shares to house account as a last option because at the relevant time when we moved these shares, there was no alternate available. As a responsible company, we disclosed the fact in company's annual accounts and never used these shares for any advantage to the company in net capital balance, etc. The Inspection Team mentioned in their report that Respondent is using these shares to its own advantage which is against the factual position. We categorically disagree with the findings of the Inspection team as we are very well aware that these shares of clients were being used only to support respective clients positions and were never used for any advantage to the Company"

As far as the placement of clients' shares in house account are concerned, the Respondent must be aware of the regulation 4.19 of the PSX Rule Book which states that the broker must ensure that the assets belonging to their clients are kept separate from the assets of the brokers. By placing the shares of clients in its house account, the Respondent was non-compliant with the requirement of said regulation. The Respondent should have placed these shares in a collateral account as mentioned in regulation 4.19.(c) of PSX Rule Book. However, the Respondent has not used the said assets for inflating its NCB.

(h) Cash Receipts/Payments over Rs. 25,000/- The Inspection Team observed that the Respondent accepted/paid cash over Rs. 25,000/- amounting to Rs 2.487 million from/to its clients in violation of Clause 8 and 9 of terms and conditions of SAOF, details as under:-

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- (i) Habib Ullah (S 18056), cash received on 15-07-2013 Rs 400,000 with narration "RCVD CSH FRM HABIBULAH AG TRD A/C MR126"
- (ii) Ashfaq Ahmad (S 18999) cash received Rs 800,000 on 15-07-2013 with narration "RCVD CSH FRM ASHFAQ AHMED TRD A/C MR135.
- (iii)Shahid Khan (S 12604) cash received Rs1,200,000 on 10-07-2013 with narration "DIRECT DEP CSH SHAHID KHAN TRD A/C P115".
- (iv)Cash payment of Rs. 86,520.00 to Muhammad Shahid (S 23585) on 11-03-2014

The Inspection Team further observed that the Respondent did not report the same to PSX.

The Authorized Representatives of the Respondent admitted the non-compliances highlighted by the Inspection Team. However, they stated that quantum and frequency of such instances was miniscule as compared to the total transactions handled by the Respondent. Nevertheless, the Respondent in the end assured that it would comply with the regulatory framework in letter and spirit in future.

From the above it is evident that the Respondent was non-compliant with clause 8 and 9 of terms and conditions of SAOF.

- 7. The Respondent being registered with the Commission as a broker and custodian of clients' assets is expected to comply with the applicable regulatory framework in letter and spirit. Further, the Respondent is required to exercise due skill, care and diligence in the conduct of its business. The Respondent has agreed to the inspection findings and resultant non-compliances. The review of past compliance record reveals that the Respondent was penalized vide Order dated February 19, 2013 in the matter of wash trades and also warned vide Order dated January 19, 2016 for discrepancies noticed in account opening form and trading on behalf of a client.
- 8. The Respondent has informed that it has rectified the non-compliances and has given assurance to comply with the regulatory framework in letter and spirit, in future. Considering this, I am not imposing any penalty on the Respondent. However, Respondent is strictly warned to ensure compliance of regulatory framework in future.

9. 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.

Asif Jalal Bhatti Executive Director (PRPD)

Islamabad. Announced on July 22, 2016