



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. I

In the matter of

**Appeal No. 47 of 2009**

United Bank Limited

.....

Appellant

8<sup>th</sup> Floor, State Life Building No 1

I.I Chundrighar Road,

Karachi

Versus

Director (SMD)

Securities and Exchange Commission of Pakistan

Securities Market Division

63, NIC Building, Jinnah Avenue, Blue Area,

Islamabad

.....

Respondent

Date of Hearing

12-11-2009

**ORDER**

**Present:**

**For the Appellant:**

Aqeel Ahmed Nasir

Muhammad Ejazuddin

Kumail Dehradunwala

Abdul Sattar Vaid

**Respondent:**

Imran Inayat Butt

**For the Respondent Department:**

Muhammad Atif Hameed



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1. This order will dispose of the appeal filed by United Bank Limited (the "Appellants") under section 33 of Securities and Exchange Commission of Pakistan Act 1997 (the "SECP Act") against the order dated July 31, 2009 (the "Impugned Order") passed by Director, SMD ("Respondent").
2. The brief facts of the case are: that the meeting of the Board of Directors ("BoD") of the Appellant was conducted on March 12, 2009 in Abu Dhabi, United Arab Emirates, to consider the financial results for the period ended December 31, 2008. KSE received verbal representations from its members regarding placement and subsequent removal during the BoD meeting of financial results of the Appellant on the website. An explanation was sought by the Securities and Exchange Commission (the "Commission") on placement of financial results of the Appellant on its website before dissemination of the financial results to KSE and while the BoD meeting was still in progress. The Appellant in its written response admitted that its financial results were placed inadvertently by its Information Technology Department (the "IT department") while the BoD meeting was in progress for a duration of approximately ten (10) minutes and did not contain the information pertaining to dividend and bonus shares. The Commission inquired of the exact time of placement of financial results on the website and their removal subsequently, and of the time of disseminating the financial results to the KSE. The Appellant in its response informed that the financial results were available on the website during 12:04 PM and 02:35 PM, for duration of two (2) hours and thirty one (31) minutes, and that the financial results were communicated to KSE at 03:33 PM after the conclusion of the Board Meeting.
3. Show cause notice (the "SCN") was issued under section 18 and section 22 of the Securities and Exchange Ordinance 1969 (the "Ordinance") as the representations on two occasions made by the Appellant regarding the time of placement and



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removal of price sensitive information on the website before its dissemination to the KSE were incongruent. The Appellant filed reply to SCN and the representative of the Appellant's appeared before the Respondent. The Respondent not satisfied with the response of the Appellant passed the Impugned Order and imposed penalty of Rs 2 million under section 22 of the Ordinance.

4. The Appellant preferred the instant appeal against the Impugned Order. The Appellant's representative reiterated the facts stated in para (3) above and in addition asserted that:

- a) The placement of the financial results on the website during the BoD meeting was inadvertent and it was caused by a technical mistake of Appellant's IT staff. The results released on the Appellant's website contained blanks in respect of "Dividends" and the "Bonus Shares" as these were subject to the outcome of BoD meeting.
- b) The draft financial statements were placed on the website on 12.3.2009 and the matter was further compounded by the verbal misstatement of the employee of the Appellant, who informed the management of the Appellant that the information remained available on the website for 10 minutes. Based on the misstatement the management wrote a letter dated 13.3.09 to the KSE and the Commission. The initial representation was followed by a comprehensive inquiry to independently verify and identify the causes that resulted in the inadvertent technical error. The inquiry was conducted by audit and inspection group on 21.3.09 and the inquiry report was signed on 28-3-09. Mr. Ejazuddin, present in the hearing was one of the inquiry officers and endorsed that the inquiry was conducted on 21-3-09.



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- c) On the basis of inquiry report it transpired that the financial results were uploaded at 12:04 pm on 12-3-09 and were rolled back at 2:35 pm on the same date. This disclosure was made by the Appellant to the KSE as well as the Commission as soon as the correct facts came to its knowledge. The difference in time was attributable to the misstatement of the individual and the Appellant has taken measures to improve the procedures involved. Moreover, no colossal loss has been caused to the investors as a result of placement of financial results on the website.
5. The Respondent maintained that the SCN was issued as the statement on two occasions made by the Appellant regarding the time of placement and removal of price sensitive information on the website before its dissemination to the KSE were different. The penalty of Rs 2 million imposed on the Appellant was proportionate to the offence as the information was price sensitive and caused volatility in the stock market on the particular date. Considerable price fluctuation and hike in transacted share volume was recorded especially for the time period for which the financial results were kept on the Appellant's website.
6. The letter addressed by the Appellant to the Commission dated 13-3-09 has been examined and the relevant part of the letter is reproduced for ease of reference:

**".....We have conducted a thorough internal review to ascertain the cause of this incident.** It transpires that the draft of the financial results were communicated by our Finance Division to our IT Division with a view to prepare in advance so that once the financial results were announced at the end of the board meeting and after being duly notified to the concerned stock exchange, the same could subsequently be placed on our website for the benefit of the public at large. However, unfortunately,



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the draft financial results were placed on the website by mistake while the board meeting was still in progress. The fact that this was clearly an oversight and an unintentional incident is demonstrated by the fact that the financial result released on the website contained blanks in respect of 'Dividends' and the 'Bounus Shares', as theses were subject to the outcome of the Board of Directors meeting. **It is also pertinent to note that the draft accounts only remained posted for approximately ten minutes and these were immediately removed from our website as soon as this mistake was identified and pointed out to us by yourself.**

Emphasis added

The bare reading of the letter shows that the Appellant had already conducted an internal investigation, which had concluded that the draft accounts remained posted for approximately ten minutes. On further inquiry by the Commission vide letter dated 27-3-09 as to the exact time of the placement and removal of the price sensitive information, the Appellant came up with the fact that the financial results remained on the website for more than 2 hrs. We therefore agree with the observations of the director (SMD) that representations on two occasions made by the Appellant regarding the time of placement and removal of price sensitive information on the website before its dissemination to the KSE were incongruent.

- b) As to the quantum of penalty imposed on the Appellant, we are of the view that the financial results are price sensitive information and are to be dealt with extreme care. In the present case the financial results caused volatility in the market and have misled the investors. The Respondent



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has already taken a lenient view by imposing fine of merely Rs 2 million for violation of section 18 of the Securities and Exchange 1969 Ordinance, when the maximum fine could have been Rs.50 million.

In view of the above, we do not find any ground to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.

**(SALMAN ALI SHAIKH)**

Chairman

**(S. TARIQ ASAF HUSAIN)**

Commissioner (LD)

Announced on: 24-12-09