



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 99 of 2017

M/s. Fair Edge Securities (Pvt) Limited

Appellant

Versus

The Commissioner (SMD), SECP, Islamabad.

Respondent

Date of hearing:

January 23, 2020

Present:

For Appellant:

Mr. Mumtaz A. Chaudhary

For Respondent:

- i. Mr. Tahir Mahmood Kiani, Joint Director (SMD), SECP
- ii. Mr. Osman Syed, Joint Director (Adjudication-I), SECP
- iii. Mr. Muhammad Ali, BCD, CRO-SECP, Lahore
- iv. Mr. Muhammad Faisal, Management Executive (Adjudication-I), SECP
- v. Ms. Mehwish Naveed, Management Executive (Adjudication-III), SECP

ORDER

1. This Order shall dispose of Appeal No. 99 of 2017 filed by M/s. Fair Edge Securities (Pvt.) Limited (the Appellant) against the Order dated August 31, 2017 (the Impugned Order) passed by the Commissioner, SMD (the Respondent) under Section 150 of the Securities Act, 2015 (the Act).
2. The Brief facts of the case are that the Appellant is a Trading Rights Entitlement Certificate (TREC) holder of the Pakistan Stock Exchange Limited (the PSX) and registered as a broker with the Securities and Exchange Commission of Pakistan (the Commission) under the Brokers and



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Agents Rules, 2001. The Commission vide order dated December 15, 2016 appointed an inspection team to inspect the books and record of the Appellant for the period of July 1, 2015 to November 30, 2016. The review of the inspection report transpired that the Appellant was non-compliant with the following provisions of the regulatory framework:

I. The Appellant had failed to comply with the requirements of Regulation 21 of the Securities Brokers (Licensing & Operations) Regulations, 2016 (the Regulations) and Rule 4(4) of the Securities Exchange Rules, 1971 (the Rules), while issuing trade confirmations to clients. The Appellant had issued trade confirmation without mentioning the following requisite information;

- a) Date on which the order is executed;
- b) Name and number of the Securities;
- c) Nature of transaction;
- d) Price;
- e) Commission, if the member is acting as a broker;
- f) Whether the order is executed for the member's own account or from the market.

II. The Appellant had failed to maintain proper books of accounts, as required under Section 79 of the Act and Rule 8 of the Rules. Instances of failure to update books of account and difference between trial balance and audited financial statement of the Appellant are as follows;

Sr.No	Description	As per Audited Accounts	As per Trial Balance	Difference
1.	Accumulated Profit	37,111,131	Not Updated	
2.	Provision for Taxation	356,672	Not Updated	
3.	Deferred Tax Asset	280,107	280,107	0
4.	Property and Equipment	399,892	399,892	0
5.	Brokerage Income	3,334,031	3,338,200.6	4,169.60
6.	Account Payable	3,765,175	1,715,235.14	2,049,939.86

3. In the light of the inspection report findings, the Respondent issued a Show Cause Notice dated July 3, 2017 (the SCN) to the Appellant. The Appellant submitted a reply to the SCN on July 19, 2017 whereas hearing in the matter was held on July 27, 2017. The Respondent had accepted the



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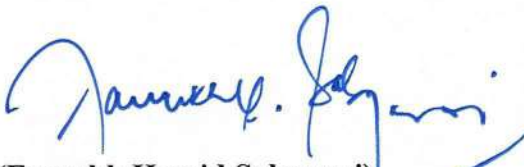
Appellant's plea with regard to the difference in heads of accounts "Brokerage Income" and "Accounts Payable" appearing in the trial balance and audited financial statements, however, the Appellant's assertions with regard to failure to update the trial account balance of "Accumulated Profit" and "Provision for Taxation" and trade conformation to clients without requisite information were rejected. Therefore, the Respondent had imposed a penalty of Rs. 500,000/- on the Appellant, under Section 150 of the Act.

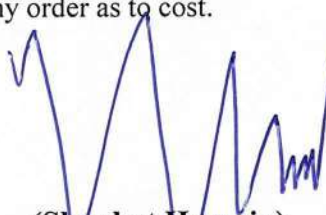
4. The Appellant had filed this Appeal *inter alia* on the grounds that the clients' trade confirmation reports contained all other information except "nature of transaction". The Appellant further stated that missing information was a result of malfunctioning of software, however, subsequently the default was rectified. The Appellant submitted that the trial account balance of "Accumulated Profit" and "Provision for Taxation" were updated after inspection and the Respondent was apprised about this fact during the hearing of the SCN.
5. The Respondent has rebutted the grounds of Appeal and stated that the plea of malfunctioning of software is not tenable because the Appellant is engaged in the business of brokerage since June 2003, whereas, the trade confirmation requirements were applicable since 2001. Therefore, it was incumbent upon the Appellant to provide trade confirmations to its clients, encompassing all information as required in Regulation 21 of the Regulations and Rule 4(4) of the Rules. The Respondent further stated that the trial balance of "Accumulated Profit" and "Provision for Taxation" was not updated at the time of inspection, therefore, subsequent compliance did not absolve the Appellant.
6. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellant's representative reiterated the grounds of Appeal and prayed for a lenient view whereas, the Respondent's representatives argued that Appellant's subsequent compliance did not absolve it from the violations mentioned and established through the Impugned Order.
7. The Bench has carefully gone through the contents of the Impugned Order and other relevant record. It has been observed by the Bench that in the SCN, initially three allegations were levelled against the Appellant, however, while passing the Impugned Order one allegation was dropped and penalty was imposed on only two counts.



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8. The Bench has observed that the Appellant had updated the trial account balance of "Accumulated Profit" and "Provision for Taxation" before hearing of the SCN, however, the Respondent was of the view that subsequent compliance did not exonerate the Appellant from the consequences of the default. The Bench has asked the Respondent to submit clients' trade confirmation reports reviewed by the inspection team and the Respondent. The requisite reports were provided by the Respondent's representative vide email dated February 17, 2020. The Bench has also asked the Appellant's representative to provide a few current trade confirmation reports and reports generated during the review period. The required reports were provided on January 24, 2020, February 10, 2020 and February 11, 2020. The Bench has reviewed the clients' trade confirmation reports provided by the Appellant and the Respondent, which revealed that all applicable requirements, except "nature of transaction" were mentioned in all reports. Therefore, we concur with the Appellant's claim, that except "nature of transaction" all other information was duly provided in clients' trade confirmation reports. The Bench has also reviewed the current clients' trade confirmation reports and observed that all required conditions were met.
9. In the circumstances, the Bench has no doubt that the Appellant had failed to comply with the applicable regulatory requirements, therefore, we are not inclined to exonerate it from the allegations established through the Impugned Order. However, keeping in view the facts of this case, we are of the opinion that, the Respondent should have taken a more lenient view.
10. In view of the above facts and subsequent compliance by the Appellant, we hereby reduce the penalty of fine from Rupees 500,000/- to Rupees 100,000/- and direct the Appellant to comply with the regulatory and statutory requirements in letter and spirit, to avoid strict penal action in future. The Appeal is disposed of accordingly, without any order as to cost.


(Farrukh Hamid Sabzwari)
Commissioner (SCD, AML)


(Shaukat Hussain)
Commissioner (C&CD, Insurance)

Announced on: **08 MAY 2020**