



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Through Courier

Before

Shahzad Afzal Khan, Director/Head of Department (Adjudication-I)

In the matter of

M/s. First National Equities Limited

Number and date of Show Cause Notice	1(67)SMD/Adj-1/LHR/2019-875 dated April 03, 2023
Date(s) of Hearing:	May 08, 2023
Present at the Hearing(s):	Mr. Arslan Tahir, Company Secretary (Authorized Representative)

ORDER

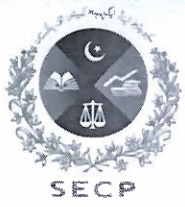
Under Regulation 28 of the Securities Brokers (Licensing And Operations) Regulations, 2016 read with Section 150(1)(a) and 150(2)(a) of the Securities Act, 2015

This Order shall dispose of the proceedings initiated against M/s. First National Equities Limited (hereinafter referred to as the "Company" / "Respondent") through Show Cause Notice No. 1(67)SMD/Adj-1/LHR/2019-875 dated April 03, 2023 (the "SCN") for its alleged failure to maintain designated terminals and identify designated system operator(s) for execution of its proprietary trades in contravention of Regulation 28 of the Securities Brokers (Licensing and Operations) Regulations, 2016 (the "Regulations"), read with the penal provisions of Section 150(1)(a) and 150(2)(a) of the Securities Act, 2015 (the "Act").

2. The Company is a Trading Rights Entitlement Certificate (TREC) holder of Pakistan Stock Exchange (PSX) licensed under the Act and regulations made thereunder. Background of the instant case is that an investigation was carried out by the Securities and Exchange Commission of Pakistan (the "Commission") vide an Order dated July 19, 2022 to investigate the trading in the scrip of M/s Treet Corporation Limited (Treet) for the period from June 03, 2021 till September 03, 2021 (the "Review Period"), in exercise of its powers conferred under Section 139(1) of the Act.

3. During the course of investigation, the investigation team (hereinafter referred to as the "Team") noted that the clients of the Company have actively traded in the scrip of Treet. The trading data obtained by the Team from PSX *prima facie* depicted that majority of the trading in the Company's proprietary accounts as well as in its clients' accounts was carried out through Trader ID No. A400. Details of the trading carried out through Trader ID No. A400 during the Review Period is summarized below for reference purposes:





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S. No.	Name	Placer ID	Buy Volume	% Buy Volume	Sell Volume	% Sell Volume
1	FNEL	A400	16,885,000	79.00%	16,866,500	85.00%
2	M/s First Florance Developers (Pvt.) Limited	A400	31,643,000	88.00%	31,951,500	89.00%
3	Syed Mohammad Abid	A400	603,000	48.00%	501,000	55.00%
4	Omer Ali Malik	A400	110,293,000	95.00%	92,639,500	83.00%
5	Essa Ali Malik	A400	125,500	33.00%	-	0.00%
6	Ali Aslam Malik	A400	2,974,500	46.00%	6,177,500	78.00%
Sub-Total			162,524,000	89.38%	148,136,000	83.63%
Group Total			181,826,000	100.00%	177,140,000	100.00%

4. The Team vide an email dated March 15, 2023 requested the Company to provide the details of terminals and system operator(s) designated for execution of its propriety trades, as required to be maintained and designated in terms of Regulation 28 of the Regulations. In response, the Company vide its email dated March 20, 2023 provided the following details of its terminals without identifying the names of designated system operators:

1.	001	Company Client
2.	400	Head Office – Garden Town
3.	083	Company Clients 003
4.	010	A1
5.	568	Company Clients 004
6.	MEM17504	*
7.	DRS17501	*

*no name/description provided

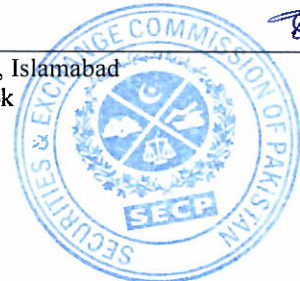
5. Review of the above-mentioned information obtained from the PSX and the Company transpired that the Terminal A400 of the Company is not exclusively being used for proprietary trading, and the said Terminal was being used to place orders in the clients' accounts as well, which *prima facie* is in violation of the Regulation 28 of the Regulations.

6. The relevant requirements of the law are reproduced hereinbelow:

Regulation 28 of the Regulations:

“28. Proprietary trading. - (1) The proprietary trades of a securities broker shall be executed through designated terminals and by designated system operator(s).

(2) A securities broker shall formulate procedures and controls for execution of





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proprietary trades in terms of secrecy and preventing trading ahead of outstanding orders of customers, and shall identify the persons who are authorized to operate the proprietary trading account.”

Section 150(1) & 150(2) of the Act:

“150. Disciplinary action in respect of licensed person. —(1) Subject to section 154, where—

(a) a licensed person is or was at any time, guilty of misconduct...

(2) Subject to section 151, where a licensed person is or was at any time, guilty of misconduct, the Commission may make one or more of the following orders, separately or in addition to any power exercisable under clause (i), (ii) or (iii) of sub-section (1) that the licensed person shall pay to the Commission by way of penalty such sum,—

(a) not exceeding fifty million rupees...

(5) In this section “misconduct” means—

(a) a contravention of any of the provisions of this Act, the rules, regulations made by the Commission or regulations made under this Act...”

7. Considering the aforesaid, the SCN was served upon the Company for alleged contravention of Regulation 28 of the Regulations read with the penal provisions of Section 150(1)(a) and 150(2)(a) of the Act. In response to the SCN, the Company submitted its response dated April 17, 2023, relevant excerpts of which are reproduced below:

“The Regulation 28 is evident as it requires that Proprietary Trade should be executed through designated terminals and the details of the terminals have been notified to the Investigation Team through email dated March 20, 2023.

Additionally, the Regulation 28 as reproduced above demands for specifically the following things;

- a) Designated terminals*
- b) Designated system operators*
- c) Procedures and controls for execution of proprietary trades*
- d) Details of proprietary account authorized person*



We have designated terminals along with operators, the information of which has already been submitted to the respective investigation team already during the course of investigation. While additionally considering the facts of the case we like to sketch the scenario of word “Designated”, we state that this word has not been defined under the Regulations or other relevant laws while the dictionary meaning of this word does



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not stand with any proviso which can be presumed here for any specific exclusion.

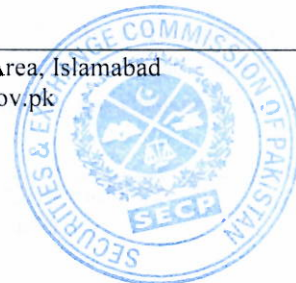
Consequently, we would state that we have provided the above stated details to the concerned investigation team as advised by the investigation team under the authority of the Section 139 of the Securities Act, 2015. The evidence of which has been attached herewith with this reply for your reference. Therefore, the contravention of this Regulation specifically does not exist as the list of complete employees along with complete details have already been provided to the concerned investigation team and further, for the confirmation of authorization the account opening of the Company was also submitted for investigation team consideration.

Further, for your reference we would state that the most of the clients carried out their trades either with their online application provided by the Company or through asking any trader, whichever they find convenient and appropriate at particular time of placement of orders. This mentioned fact has been clearly stated to the investigation team already. This clearly identifies that the Company has no maleficent intentions by misleading the investigation team...

The applicability of the above reproduced Section 150 of the Securities Act, 2015 clearly states the conditions under which scenario of misconduct arises as reproduced above under Section 150(5). In this scenario, we would like to state that none of such situation has arisen under which the jurisdiction of the Section 150 of the Securities Act, 2015 becomes applicable and which is clearly subject to be applied in a case of happening of any mentioned conditions above. The complete projection of Section 139 of the Securities Act, 2015 directs towards the Section 159 of the same act solely. And further, the application of Section 150 is subject to Section 154 of the Securities Act.

Considering the detailed elaboration, we trust that this intended reply fulfills the requirement of said notice issued by you. Besides, all allegations in SCN being indistinct and assumptive cannot be sustained and are strongly denied..."

8. The Company was accorded an opportunity of personal representation through a hearing held on May 08, 2023, which was attended by Mr. Arslan Tahir, Company Secretary (duly authorized by Mr. Ali Aslam Malik, Chief Executive Officer of the Company). The Respondent reiterated its afore-referred written response during the course of hearing. It was discussed during the hearing that details on Trader ID/Terminal A400 have neither been provided to the Team nor in the written submissions made by the Respondent in response to the SCN. The Authorized Representative was advised to clearly identify the names & designations of individual(s) who have been duly authorized by the Board of Directors or Chief Executive Officer of the Company to operate this designated Terminal A400. The Authorized Representative committed to provide the same. A reminder email dated May 16, 2023 was also sent subsequently to the Authorized



(Signature)



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Representative advising him to submit the requisite information/documents in due course of time.

9. On May 19, 2023, the Authorized Representative through its email submitted as under:

“With reference to the subject cited above, we would like to notify the requisite details as you have asked for through email dated May 16, 2023. For your consideration, we are explaining things categorically here.

i) Initially, you have asked about the identification of the operator in respect of designated terminal A400.

We would like to state that the designated terminals for proprietary trading are being operated by the designated system operators and the name of the designated operator is Mr. Amir Shehzad and this specific detail has already provided to the investigation team though we are also specifying here again apropos.

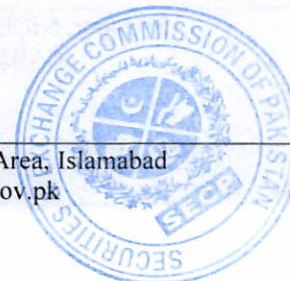
ii) Additionally, you have asked about the response in respect of allegations raised in SCN by your office.

In reference to this, we would state that we have already submitted the reply of the SCN on April 17, 2023 and for further consideration, we are attaching the same with this email...”

10. I have gone through the relevant provisions of the law and submissions made by the Respondent in its written response as well as through its Authorized Representative during the subsequent hearing. I have noted the following pertinent aspects in the matter at hand:

A. Non-identification of Designated System Operators:

- i. With respect to the first observation regarding non-identification of names of the designated system operators for the seven (07) trading terminals that the Respondent itself identified to be designated terminals for proprietary trading, it is clearly evident that the Respondent in its response email to the Team dated March 20, 2023 omitted and/or failed to provide the names of its designated system operators (including for its terminal A400), and merely provided insufficient description next to each of the seven trading terminal identification number(s) as “Company Client” or “Head Office – Garden Town”. (Reference be made to para 4 above).





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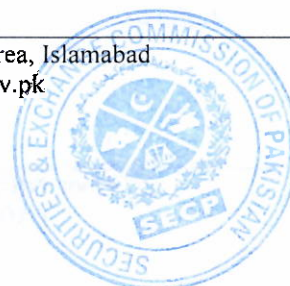
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ii. The Respondent has also submitted that *for the confirmation of authorization, the account opening of the Company was also submitted for investigation team consideration*. It is noted that in response to the Team's letter dated November 01, 2022 (followed by reminder emails dated November 14, 2022 and November 22, 2022), the Respondent vide email dated November 29, 2022 *inter alia* provided account opening form (AOF) in respect of its own account, which *prima facie* reflects that Mr. Amir Shehzad and Mr. Ali Aslam Malik were authorized to operate the said account. It is, however, pinpointed that the account is titled as "First National Equities Limited" while Chapter 7.5 of PSX Rule Book clearly enunciates that *the account shall be in the name of the Securities Broker and the title of the account must contain the word "proprietary"*. This fact itself casts doubt on the accuracy of the account opening form and on the purpose of the said account being proprietary trading. Even otherwise, the authorization on an AOF essentially relates to operation of that particular account; whereas, the instant proceedings revolve around non-identification of designated system operator(s) for all of its designated proprietary trading terminals.

iii. The Respondent in its email dated May 19, 2023 has contended that its designated system operator is Mr. Amir Shehzad, and that this information has already been provided to the Team. Although the Respondent in its said email neither provided any evidence of the board authorization of Mr. Amir Shehzad to act as designated system operator (as directed during the hearing) nor any evidence of provision of the said information to the Team, it is noted that as per the record, the Respondent provided the Team (along with AOFs) an extract of resolution passed by its Board of Directors on October 23, 2017, which is reproduced below for ease of analysis:

"...Mr. Ali Aslam Malik (CEO/Director), Mr. Amir Shehzad (Executive Director) be and hereby authorized and empowered "SINGLY BY ANY ONE" to represent to the First National Equities Limited on all matters pertaining to the maintenance and operation of the account, to fulfill all the responsibilities and obligations of the Company...in relation to the accounts from time to time, and to deal with other incidental and ancillary acts..."

iv. Bare reading of the above quoted board resolution extract reveals that Mr. Ali Aslam and Mr. Amir Shehzad were only authorized to "represent" the Respondent on the matters referred thereunder, and were not essentially "designated" to operate the proprietary trading terminals and/or to execute the proprietary trades of the Respondent. Secondly, the resolution refers to maintenance and operation of the "account"; however, no inference can clearly be drawn for it to mean the "proprietary trading account(s)" of the Respondent, since the term "account" is vaguely mentioned without any further description. Even otherwise, the resolution is contrary to the recent submission made by the Respondent in its email of May 2023 that *"the name of the designated operator is Mr. Amir Shehzad"*, since the





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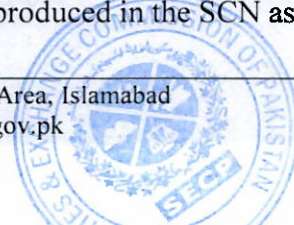
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resolution presumably identifies the names of two (02) individuals (i.e. Mr. Ali Aslam Malik and Mr. Amir Shehzad), and not specifically Mr. Amir. Therefore, it cannot be justifiably concluded that the said resolution has been passed to “designate” the aforementioned individual(s) as the system operator(s) of the Respondent’s designated terminals for proprietary trading. It is also ambiguous as to whether Mr. Amir Shehzad is the designated system operator for all of the seven (07) terminals identified by the Respondent; and if Mr. Amir is only authorized to execute trades on Terminal A400, the names of designated system operators for other six (06) terminals have neither been furnished to the Team nor in response to the SCN/during the course of instant proceedings.

- v. The contention of the Respondent that *the contravention of Regulation 28 does not exist as the list of complete employees along with complete details have already been provided to the Team* does not hold merit – firstly, the list of all employees is not abundantly relevant to the case at hand, as the instant proceedings particularly relate to non-provision of the specific details of system operator(s) designated to operate proprietary trading terminal(s). Secondly, the Respondent’s letter dated January 26, 2023 addressed to the Team (*annexed in response to the SCN dated April 17, 2023*), purportedly providing list of employees etc., still provided incomplete information regarding its trading Terminal A400 by not mentioning the name of operator and merely mentioning “Head Office – Garden Town”, (as also emphasized in para A(i) above).

B. Non-Exclusive Use of Designated Terminals:

- i. With regards to the allegation that the Respondent’s Terminal A400 is not exclusively being used for proprietary trading, and is being used to place orders in the clients’ accounts as well, it is noted that the Respondent in its written response and during the course of hearing has only relied on the absence of any definition of the word “designated” in the Regulations or akin. The Respondent has thus, in substance, not denied the placement and execution of client orders through its terminal A400 that was, in fact, designated for proprietary trading.
- ii. The trading activities as per the data obtained by the Team from the PSX clearly evidences the fact that the Placer ID A400 was used to place orders for both in the Respondent’s proprietary account and the clients’ accounts for trading in the scrip of Treet. The argument put forward by the Respondent that *most of the clients carried out their trades either with their online application provided by the Company or through asking any trader, whichever they find convenient and appropriate at particular time of placement of orders* is not supported by apt documentary evidence and does not cogently address the observation in hand keeping in view the evident trading history, which clearly demonstrates that the orders/transactions in question, as specifically reproduced in the SCN as well, were



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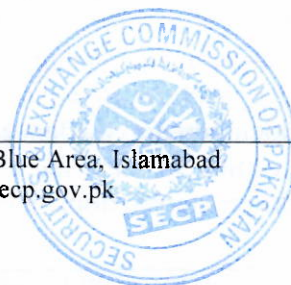
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not carried out by the clients themselves and were factually executed through the Respondent's own trading terminal A400.

- iii. As far as the ambit of the word 'designated' from the legal standpoint is concerned, it is highlighted that Regulation 28 of the Regulations itself pronounces the mandatory requirement to maintain secrecy and to prevent trading ahead of outstanding customer orders – and in order to ensure such confidentiality, one of the measures emphasized under the said Regulation is to identify the persons who are authorized to operate the proprietary trading account. The rationale of clear segregation between trading for direct gain of a securities broker and trading on orders of customers is plainly evident. Thus, the requirement to have 'designated' terminal(s) and 'designated' system operators quite logically stems from this innate need for segregation. Such segregation is also emphasized under the PSX Rule Book (*Chapter 7: Proprietary Trading Regulations*), which stipulates that a securities broker shall not aggregate an order for a customer with orders for other customers, or with own account orders, and that every securities broker who engages in proprietary trading shall have a separate account.
- iv. The Black's Law Dictionary (*Revised Fourth Edition*) defines the word "designate" as "to indicate or **set apart** for a purpose or duty... Mutual Discount Corporation v. Nagy, 111 N.J.L. 592, 169 A. 185, 186. To nominate. Sredzinski v. Schmieding, 283 N.Y.S. 332, 334, 245 App. Div. 398." Thus, it is safe to conclude that the legislation for proprietary trading prescribed under the Regulations connotes this context for "designated" terminals as well and clearly mandates a securities broker to 'set apart' its trading terminals for proprietary trading (from terminals being used to place customer orders).

The above-mentioned facts and analysis thereof evidently establish the contravention of Regulation 28 of the Act, since the Respondent failed to clearly identify the designated system operators for its proprietary trading terminals. The Respondent has also failed to designate its Terminal A400 exclusively for proprietary trading and carried out customer trades/orders using the same terminal, thereby defeating the inherent purposes of confidentiality, secrecy and maintenance of segregation between customer order and proprietary trading.

11. In view of the above-stated facts, submissions made by the Respondent, and the established default of Regulation 28 of the Regulations, I, in exercise of the powers conferred upon me under Section 150(2) of the Act, hereby impose a **penalty of Rs.250,000/- (Rupees Two Hundred and Fifty Thousand) only on the Respondent**. The Respondent is directed to deposit the aforesaid penalty in the account of the Commission being maintained with the designated branches of MCB Bank Limited, within a period of thirty (30) days of the announcement of this Order, and furnish original Deposit Challan to this office.





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12. This Order is being issued without prejudice to any other action that the Commission may initiate against the Company and/or its management (including CEO of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.



A handwritten signature in blue ink is positioned above the name of the Director/Head of Department.

(Shahzad Afzal Khan)
Director/Head of Department
(Adjudication Department-I)

Announced:

June 29, 2023

Islamabad

