



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

Before The Director (Securities Market Division)

In the matter of Show Cause Notice issued to

Crescent Standard Brokerage and Investment Services Limited

Under Rule 8 read With Rule 12 of The Brokers and Agents Registration Rules, 2001

Number and Date of Notice: No. MSW/SMD/LSE/1(5)2006 dated May 22, 2008
Date of Hearing: June 03, 2008
Present at the Hearing: Mr. Tariq Aleem - Chief Executive Officer
Date of Order: June 12, 2008

ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. MSW/SMD/LSE/1(5)2006 dated May 22, 2008 (**"the SCN"**) issued to Crescent Standard Brokerage and Investment Services Limited (the **"Respondent"**), member of the Lahore Stock Exchange (Guarantee) Limited (**"LSE"**) by the Securities and Exchange Commission of Pakistan (**"the Commission"**) under Rule 8 of the Brokers and Agents Registration Rules, 2001 (**"the Brokers Rules"**) for violation of Rule 12 of the Brokers Rules and clause A5 of the Code of Conduct contained in the Third Schedule of the Brokers Rules.
2. The brief facts of the case are that the Respondent is a member of LSE and is registered with the Commission under the Brokers Rules. An enquiry was initiated by the Commission in exercise of its powers under Section 21 of the Securities and Exchange Ordinance, 1969 (**"the Ordinance"**) and Anjum Asim Shahid Rahman, Chartered Accountants (**"the Enquiry Officer"**) was appointed as the Enquiry Officer under the above mentioned Section for the following:
 - (a) to enquire into the dealings, business or any transaction by the broker during the period from April 01, 2006 to June 15, 2006 (**"the Review Period"**).
 - (b) to identify any and all the acts or omissions constituting the violation of the Ordinance and the Rules made thereunder.
 - (c) to identify violations of any other applicable laws, including but not limited to the Brokers Rules, Regulations for Short Selling under Ready Market, 2002 (**"Short Selling Regulations"**), General Rules and Regulations of LSE, Securities and Exchange Rules 1971 (**"the 1971 Rules"**) and directives issued by the Commission from time to time.



3. The findings of the Enquiry Officer revealed several instances of potential non compliances with applicable laws and regulations. A copy of the Enquiry Officer's report was sent to the Respondent on April 24, 2008 which required the Respondent to provide explanations on the observations of the Enquiry Officer together with supporting documents.
4. After perusal of the Respondent's replies to the above mentioned letter, which did not explain the position in respect of some instances, the SCN was issued to the Respondent under Rules 8 of the Brokers Rules stating that the Respondent has prima facie contravened Rule 12 of the Brokers Rules read with Clause A5 of the Code of Conduct contained in the Third Schedule to the Brokers Rules which are reproduced as under:
Rule 12- "A broker holding a certificate of registration under these rules shall abide by the Code of Conduct specified in the Third Schedule".
Clause A5 of the Code of Conduct- "A broker shall abide by all the provisions of the Securities and Exchange Commission of Pakistan Act, 1997 (**the Act**) and the rules, regulations issued by the Commission and the stock exchange from time to time as may be applicable to him".
5. On May 22, 2008, the Respondent was called upon to show cause in writing within seven days and appear before the undersigned on June 03, 2008 for a hearing, to be attended either in person and/or through an authorized representative.
6. The hearing was attended by Mr. Tariq Aleem, Chief Executive Officer of the Respondent who argued the case. The Respondent during the hearing requested that its earlier reply to the enquiry report dated April 30, 2008 may be treated as reply to the SCN.
7. A summary of contentions and objections that were raised by the Respondent in its written submissions and during the hearing and findings and conclusion of the Commission on the same is as follows.
8. **Blank Sales (Issue No. 1)**
 - 8.1 In terms of Regulation 4 of the Short Selling Regulations, Blank Sales are not permissible and in terms of Regulation 5 of the Short Selling Regulations, it is provided that:
"No Member shall make a Short Sale unless:
 - a. Prior contractual borrowing arrangement has been made.
 - b. The sale is made at an uptick, and
 - c. The trade is identified as a Short Sale at the time of placement of order"
 - 8.2 The findings of the Enquiry Officer revealed 299 instances of Blank Sales during the Review Period
 - 8.3 The Respondent made the following submissions on the issue:



- The Respondent, during the hearing admitted that its clients had engaged in Blank Selling and its clients did not have any pre-existing interest against the sales mentioned in the Annexure – A (**“the Annexure”**) of the SCN.
- The Respondent further stated that its system was not capable of detecting short selling and it was in practice of checking clients' positions only at the end of the day. Therefore, the system failed to detect the clients who engaged in first selling and later on squaring their positions on the same day.

8.4 I have considered the contentions of the Respondent and it is clear that 299 Blank Sales have been made in violation of Regulation 4 of the Short Selling Regulations. In terms of Rule 8 of the Brokers Rules, sub rule (ii) where the Commission is of the opinion that a broker has inter alia failed to comply with any requirements of the Act or the Ordinance or of any rules or directions made or given thereunder, in terms of sub rule (iii) has contravened the rules and regulations of the stock exchange and in terms of sub rule (iv) has failed to follow any requirement of the Code of Conduct laid down in the Third Schedule, the Commission may in the public interest, take action under Rule 8(a) or (b) of the Brokers Rules.

8.5 In light of the above facts that the Respondent by making Blank Sales has violated the Short Selling Regulations thereby attracting sub rule (iii) of the Rule 8 of the Brokers Rules and has also failed to comply with Clause A5 of the Code of Conduct contained in the Third Schedule to the Brokers Rules, thereby, attracting sub rule (iv) of the Rule 8 of the Brokers Rules. Accordingly, a penalty of Rs. 75,000 (Rupees Seventy Five Thousand only) is hereby imposed on the Respondent under Rule 8 (b) of the Brokers Rules.

9. Account Opening Forms (**“Issue No. 2”**)

9.1 In terms of Commission's Directive No. SMD/SE/2(89) 2003 dated July 23, 2003 which requires all the members-brokers to maintain Account Opening Form(s) (**“the AOF(s)”**) in conformity with the Standardized Account Opening Form (**“the SAOF”**) prescribed by the Commission and subsequent changes made to the SAOF vide letters No. SMD/SE/2(89) 2003, dated November 19, 2003 and January 20, 2004. Subsequently this SAOF was also made part of LSE General Rules and Regulations as Chapter VIII. The said directives of the Commission require that

- List of Transaction fee, commission to be charged by the broker and other CDC charges to be levied should be enclosed with the AOFs.
- Attested copies of clients' CNICs should be attached with AOF(s).
- Names of Nominee should be mentioned on AOF(s).
- All fields of AOF(s) should be properly filled in and non applicable fields should be marked as “N/A”.
- All AOFs should be available in record of the broker.
- AOFs should be signed by the witnesses.



9.2 The findings of the Enquiry Officer revealed that:

- Lists of transaction fee, commission to be charged by the broker and other CDC charges to be levied were not enclosed with the AOFs.
- Attested copies of clients' CNICs were not attached with AOF(s).
- Names of Nominees were not mentioned on AOF(s).
- Non applicable fields in the AOFs were not marked as 'N/A'.
- AOFs were not signed by the witnesses.
- AOFs of 12 clients were not available in record of the broker.

9.3 The Respondent made the following submission on these issues:

- With regard to abovementioned deficiencies the Respondent asserted that same were result of human errors in some of the AOFs.
- With regard to the missing AOFs the Respondent acknowledged that currently the same were not available on record. Moreover, the Respondent stated that all the AOFs were available when the brokerage house was operational in 2006; however, some of the record had gone missing during shifting of the office.

9.4 I have considered the contentions of the Respondent and the issues raised therein and the same are addressed by me below:

- I have considered the contentions of the Respondent and it is clear to me that the Respondent has failed to maintain AOFs in accordance with the Commission's directives and LSE General Rules and Regulations. The Respondent should ensure that all its record is maintained properly and safely. It may be noted that AOF is the basic agreement between clients and the broker and in case of any dispute all matters are resolved as per the clauses of AOFs.

9.5 Taking into account the low number of missing AOFs and deficiencies in some of the AOFs, I am inclined, on this occasion, to take a lenient view in the matter and will not take any punitive action under the Rule 8 of the Brokers Rules. As such I believe a 'caution' in this instance to the Respondent would suffice and I would further direct the Respondent to ensure that full compliance is made of all the laws, regulations and directives of the Commission in future for avoiding any punitive action under the law.



10. **Order Register ("Issue No. 3")**

10.1 In terms of Rule 4(1) of the 1971 Rules it is provided that:

"All orders to buy or sell securities which a member may receive shall be entered, in the chronological order, in a register to be maintained by him in a form which shows the name and address of the person who placed the order, the name and number of the securities to be bought or sold, the nature of transaction and the limitation, if any, as to the price of the securities or the period for which the order is to be valid."

10.2 The findings of the Enquiry Officer revealed that the register as mentioned above was not maintained by the Respondent during the Review Period.

10.3 The Respondent made the following submission on the aforementioned issue:

- The Respondent during the course of hearing acknowledged that the Order Register as mentioned above was not maintained. However, the Respondent stated that telephonic recording of all calls were kept by the brokerage house to fulfill this requirement however, same is not available in record now.

10.4 I have considered the contentions of the Respondent and it is clear that Order Register as required under the Rule 4(1) of the 1971 Rules was not being maintained by the Respondent. Further, the Respondent assertion that recording of all telephone calls was kept by the house can not be accepted in absence of any proof of same.

10.5 Considering the above mentioned fact I am inclined, on this occasion, to take a lenient view in the matter and will not take any punitive action under Rule 8 of the Brokers Rules. As such, I believe that a caution in this instance to the Respondent would suffice and I would further direct the Respondent to ensure that full compliance is made of all the laws, regulations and directives of the Commission in future for avoiding any punitive action under the law.

11. **Separate Bank Account for Clients Funds ("Issue No. 4")**

11.1 In terms of Commission's directive No. SMD/SE 2(20)/2002 dated March 4, 2005 which states that:

"The exchanges are to ensure that brokers follow the practice of segregating clients' assets from the broker's assets in order to ensure that clients' assets are not misused.

For this purpose brokers should have one separate bank account which includes all the cash deposits of their clients along-with records/breakdown of client positions."

11.2 The findings of the Enquiry Officer revealed that the Respondent was not maintaining a separate bank account for clients' funds.



- 11.3 The Respondent made the following submission on the aforementioned issue:
- The Respondent during the hearing asserted that a separate bank account was being maintained for the clients' funds and for the house expenses a separate bank account was being maintained. However, during the month of June 2006, as the brokerage house was being closed, utility bills related transactions were routed through the bank account which was being maintained for clients' funds.
- 11.4 Considering the above facts and the contentions of the Respondent, it is evident that Respondent has failed to comply with Commission's directive. The Respondent should not route any transaction of the brokerage house through the bank account maintained for clients' funds.
- 11.5 In this issue I am inclined to take a lenient view and will not take any punitive action under Rule 8 of the Brokers Rules. I believe that a caution in this instance to the Respondent would suffice and I would further direct the Respondent to ensure that full compliance is made of all the laws, regulations and directives of the Commission in future for avoiding any punitive action under the law.

12 **Trade confirmations ("Issue No. 5")**

12.1 AND WHEREAS, Rule 4(4) of the 1971 Rules states that:

"A member executing an order of a customer shall, within twenty four hours of the execution of the order, transmit to the customer a confirmation which shall include the following information, namely -

- i. date on which the order is executed;
- ii. name and number of the securities;
- iii. nature of transaction (spot, ready or forward and also whether bought or sold);
- iv. price;
- v. commission, if the member is acting as a broker;
- vi. whether the order is executed for the member's own account or from the market."

12.2 AND WHEREAS, the findings of the Enquiry Officer revealed that copies of confirmations as mentioned above were not kept in record.

12.3 The Respondent made the following submission on the aforementioned issue:

- The Respondent asserted that it did send all the trade confirmations to the clients within 24 hours of the trade and as a proof of same copies of courier service slips were provided to the Enquiry officer. However, the Respondent admitted that duplicate copies of trade confirmations were not kept in record but the same were being maintained in soft copy form.

12.4 I have considered the Respondent's assertions and of the view that the receipts of the courier maintained by the Respondent merely demonstrate the fact that some information was disseminated to the clients and did not provide information about the contents of the information disseminated. Hence, the spirit of the above mentioned Rule was not being followed.



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12.5 In light of the above it is established that the Respondent has violated the requirements of Rule 8 (1) (g) of the 1971 Rules, thereby attracting sub rule (ii) of the Rule 8 of the Brokers rules and has also failed to comply with Clause A5 of the Code of Conduct contained in the Third Schedule to the Brokers Rules, thereby attracting sub rule (iv) of the Rule 8 of the Brokers Rule. Accordingly, a penalty of Rs.1,000 (Rupees One Thousand only) is hereby imposed on the Respondent under Rule 8 (b) of the Brokers Rules.

13. As stated above, the Respondent is penalized as follows:

- a) As regards issue No1 and 5, as stated above, a penalty of Rs. 76,000/- (Rupees Seventy Six Thousand only) is imposed.
- b) No punitive action is taken in relation to issue No. 2, 3 and 4 and a simple caution will suffice.

13.1 The matter is disposed of in the above manner and the Respondent is directed to deposit the fine with the Commission not later than fifteen (15) days from the receipt of this Order.

Imran Inayat Butt
Director
Securities Market Division