

**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**

NIC Building, Jinnah Avenue, Blue Area, Islamabad.

**BEFORE THE EXECUTIVE DIRECTOR (SECURITIES MARKET DIVISION)**

IN THE MATTER OF SHOW CAUSE NOTICE DATED 18.09.2003 ISSUED TO M/S. INVESTEC SECURITIES LIMITED, MEMBER KARACHI STOCK EXCHANGE ("KSE")

Date of Hearing: September 25, 2003

Present at the hearing:

Representing the Member:

Mr. Masud A. Naqvi	Managing Director & Chief Executive Investec Securities Ltd.
Agha Faisal	Legal Counsel

Representing the KSE:

Mr. Zafar Abdullah	Chief Manager Operations
Mr. Imran Iqbal Panjwani	Head of Internal Audit

Assisting the ED(SM):

Mr. Usman Hayat	Joint Director (SM)
Mr. Murtaza Abbas	Assistant Director (SM)

**ORDER**

1. This matter arises out of the Show Cause Notice dated September 18, 2003 issued by the Securities and Exchange Commission of Pakistan (the "Commission") to the Investec Securities Ltd. ("ITSL"), Member Karachi Stock Exchange ("KSE").

2. Facts of the case are that the Commission vide its letter dated July 3, 2003 directed the KSE to closely monitor and analyze trading in the shares of certain companies, including those of ITSL. Based upon the preliminary findings, KSE initiated an inquiry into trading in the shares of ITSL and vide its letter dated July 11, 2003 requested ITSL to provide specified information by July 14, 2003.

3. ITSL stated that the said letter was received at their brokerage house on the weekend i.e. Saturday, July 12, 2003 at 12:30 p.m., without the enclosures. It was

further stated by ITSL in their letter dated July 16, 2003 addressed to the Manager Internal Audit that it was agreed upon through telephonic conversation that ITSL will be able to respond to the KSE's request by the first week of August 2003.

4. KSE vide its letter dated July 17, 2003, extended the date for submission of information to July 22, 2003 and informed ITSL that if it fails to provide the complete information within the time limit, KSE shall appoint an independent firm of Chartered Accountants to investigate the matter. Instead of providing the information within the time limit, ITSL requested KSE, through its letter dated July 22, 2003 to highlight the provisions of law under which the information was requested. KSE vide its letter dated July 28, 2003 demanded that the required information be provided immediately. ITSL did not provide the required information and through its letter dated July 29, 2003 insisted upon KSE to execute an indemnity bond before information could be provided.

5. Since ITSL did not provide the required information to the KSE, an independent firm of Chartered Accountants, Tariq Abdul Ghani & Co (TAG), was appointed by the KSE, to carry out system audit of the brokerage house and to conduct an inquiry into trading of ITSL's shares. TAG vide its letter dated August 26, 2003 informed KSE that ITSL has failed to provide the information required by TAG.

6. In view of the above mentioned facts, KSE vide its letter dated July 29, 2003 requested the Commission to take appropriate action in this regard, following which, the subject Show Cause Notice was issued to ITSL which held them responsible for the prima facie violation of clause D (2) of the Code of Conduct read with Rule 12 of the Brokers and Agents Registration Rules 2001 (the "Rules"). In the said Show Cause Notice, ITSL was given an opportunity to show cause as to why action under Rule 8 of the Rules should not be taken against it for the above-mentioned violation of law.

7. Hearing before me was conducted on September 25, 2003 in this regard, in which both the parties, i.e. ITSL and KSE were given an opportunity to plead their cases.

8. Apart from the facts mentioned in the preceding paragraphs, KSE submitted that being a front-line regulator, KSE enjoys complete authority under Article 55(d) of its Articles of Association to ask for any information from its members, which includes the client-level information. In this regard even the procedural requirements of the above referred article were duly fulfilled as the General Manager-KSE vide his letters requested ITSL for the requisite information. It was also emphasized that requiring a member to furnish such information is very much an ordinary routine matter of KSE and there is nothing unusual or extraordinary about such action.

9. ITSL at the outset categorically submitted that ITSL has never denied furnishing the information to KSE, however, it is very much within ITSL's legal rights to ask KSE as to under what provisions of law ITSL is bound to furnish such information. While making the said submission it was brought to my notice by the counsel of ITSL that a suit for declaration, permanent injunction and damages of Rs.100,000,000/- has been filed by ITSL against the KSE, against unauthorized actions taken against ITSL and it was argued that since a suit has already been filed against KSE, the Commission cannot

further proceed with the hearing. In ITSL's view KSE does not enjoy the authority to obtain client level information from the brokers as provision of such information would tantamount to a breach of clients confidentiality. However, at the same time it was admitted on behalf of ITSL that such powers can be exercised by the Commission and ITSL shall only comply with such direction if the same is being issued by the Commission. In this regard the counsel of ITSL also shared his apprehension that provisions of information on request of KSE will confront ITSL with legal actions that might be initiated by its clients for the provision of their trading information to KSE. Therefore, it was argued that if KSE wants such information an indemnity bond must be executed in favour of ITSL giving protection from any legal actions that may be brought against it by its clients.

10. Having heard the parties ITSL's stance appears to be contradictory. Whereas on one hand ITSL has taken the stand that it has at no time denied furnishing of the requisite information to KSE, on the other hand it has filed a suit challenging the demand for such information. Similarly while ITSL admits that SEC can ask for such information under clause of D-2 of the Code of Conduct of Broker and Agents Rules, 2001 which clearly provides that a broker shall not neglect, fail or refuse to submit the Commission or the Stock Exchange with which he is registered such books, special returns, correspondence and papers or any part thereof, ITSL is not willing to accept that the Stock Exchange despite being specifically empowered under the same provision can exercise similar powers. Similarly, ITSL's insistence that the complete information shall be provided to the KSE subject to the direction of the Commission in order to obtain legal protection against apprehended legal proceedings by their clients is baseless. The powers of SEC and KSE in terms of clause D-2 of the Code of Conduct are on the same footing and the mere apprehension that ITSL shall face legal action from its clients cannot be made a basis for undermining KSE's power in this regard. In any event even if such legal actions are taken against ITSL they would be without any basis in law or fact and cannot provide an excuse to ITSL for avoiding its obligations under law. Under the circumstances ITSL was clearly and firmly advised to cooperate with the KSE and provide the requisite information in pursuance of KSE's demand at the earliest as otherwise it would call for a stringent action.

11. Subsequently, a letter dated September 27, 2003 was received by the Commission from ITSL, relevant contents of which are reproduced hereunder for ready reference:

*"We take this opportunity to thank you for your patient hearing and indulgence. In compliance of your directives we have provided the requisite information to Karachi Stock Exchange on the format provided by them".*

12. On the Commission's request for confirmation of ITSL's statement about provision of the information, KSE vide its letter dated September 29, 2003 informed the Commission that ITSL has provided only some and not all of the information as sought from it. It was identified that ITSL provided the information listed as point No.1 of KSE's letter number KSE/IAD-236 dated July 11, 2003 but failed to provide the other information as mentioned in point No.2 to 5 of the said letter. KSE Vide its letter dated

October 7, 2003 further informed the Commission that despite the verbal assurance given by the ITSL's Chief Executive, ITSL has failed to provide the complete information.

13. Having heard the parties and reviewing the evidence available on record, I am of the considered opinion that ITSL is unreasonably being adamant in its position and unnecessarily delaying the matter thus it has neglected and failed to comply with the requirements of clause D2 of the Code of Conduct despite being given an ample opportunity. KSE being the front-line regulator enjoys complete jurisdiction to ask for information as requested by itself from its Members. This without any doubt includes the client level information as transactions executed by the Members are executed on behalf of their clients and constitute information relating to the business of the member. In any event the scope and ambit of clause D-2 of the said rules is very wide in its ambit and the information requested by KSE cannot be precluded from its scope.

14. It has been observed with great concern that ITSL's conduct is an attempt to undermine the role of front-line regulator, which SEC as an apex regulator will neither allow nor tolerate. ITSL has taken a novel stance of requiring a regulator to furnish indemnity bond where the regulator in its ordinary course of business being duly empowered to require such information is discharging its obligation. The conduct of ITSL is unbecoming of a member and highly disappointing.

15. In view of the foregoing, it has become imperative for SEC that this matter be dealt with sternly. There is no room for such actions in Brokers Code of Conduct. Such conduct by a broker can set a wrong precedent and send wrong signals to other market participants undermining the role of the frontline regulator. As for the objection raised regarding filing of the suit in this matter against KSE in my view this does not bar the Commission from taking cognizance of the matter, which falls very much within its jurisdiction.

16. With respect to KSE's role in the matter I must state that they could have taken action on their own end rather than looking up to SEC for regulating the conduct of their members. As a front-line regulator, it is vital that KSE should have itself exercised its powers and taken action against such misconduct. They could have very well taken action under the general rules and regulations which *inter-alia* empowers the Board of KSE to suspend the member.

17. However, at this stage, when the matter has been taken up by the Commission, I have no doubt in my mind that ITSL has clearly contravened clause D-2 of the Code of Conduct, which the Member was bound to abide under Rule 12 of the Rules. Therefore, I am hereby suspending the ITSL's Membership of KSE with immediate effect, as per Rule 8 of the Rules until further orders. KSE is hereby directed to complete its investigation through its appointed auditors and furnish its report within 30 days from the date of this order. ITSL is also directed to facilitate and ensure its full cooperation with KSE in this regard. The management of KSE, however, is hereby directed to take every possible step towards settlement of all the outstanding trades executed by ITSL and take necessary measures for ensuring smooth settlement thereof, at the clearing house and

the settlement of outstanding positions or claims of investors against ITSL. KSE and CDC are further directed to coordinate with each other in this regard. Also, if the investors wish to move their securities from the CDC account of ITSL, such transfer should also be facilitated by all concerned.

**(RAHAT KAUNAIN HASSAN)**  
Executive Director (SMD)

Islamabad,  
October 9, 2003.