



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
(Securities Market Division)

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Before The Director (Securities Market Division)

In the matter of Show Cause Notice issued to

Al-Haq Securities (Pvt.) 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)2006/52 dated August 29, 2007  
Date of Hearing: September 06, 2007  
Present at the Hearing: Mr. Ammar-ul-Haq - Chief Executive  
Date of Order: December 27, 2007

**ORDER**

1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. MSW/SMD/LSE/1(5)2006/52 dated August 29, 2007 ("**the SCN**") issued to Al-Haq Securities (Pvt.) 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 Broker 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 this case are that the Respondent is a member of LSE and is registered with the Commission under 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 KPMG Taseer Hadi & Co. ("**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 Respondent 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 there under.
  - (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 Lahore Stock Exchange (Guarantee) Limited, Securities and Exchange Rules 1971 ("**the 1971**") and directives issued by Commission from time to time.



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3. The findings of the Enquiry Officer revealed several instances of potential non compliances with applicable laws and regulations. A copy of Enquiry Officer's Report was sent to the Respondent on May 14, 2007 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 adequately explain the position in respect of some of the 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 of 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 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 August 29, 2007, the Respondent was called upon to show cause in writing within seven days and appear before the undersigned on September 07, 2007 for a hearing, to be attended either in person and/or through an authorized representative. however on Respondent's request the date of hearing was re-fixed for September 06, 2007.
6. The hearing was held on September 06, 2007 which was attended by Mr. Ammar-ul-Haq - Chief Executive of the Respondent, who argued the case. As for the written reply of the SCN the Respondent during the hearing requested that its earlier replies may be taken as reply of the SCN.
7. A summary of contentions that were raised by the Respondent in its earlier written submissions and during the hearing and findings and conclusions of the Commission on the same are 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 69 instances of Blank Sales during the Review Period.
- 8.3 The Respondent made the following submissions on the issue:



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- The Respondent in its earlier reply stated that alleged Blank Sales given in Annexure – A ("the Annexure") of the SCN were executed against borrowing agreements copies of which are also part of Enquiry Report as Annexure C-10 and C-11.
- Whereas during the hearing the Respondent stated that these trades were a result of mistake and misunderstanding and acknowledged that it failed to follow the requirements of Short Selling Regulations.

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

- The Respondent initial claim that the Blank Sales given in the Annexure were executed after obtaining borrowing agreements copies of which was also given as Annexure – C10 and C-11 of the enquiry report can not be accepted. A scrutiny of the said borrowing agreements showed that these were not borrowing agreements but unilateral authority to sell shares on behalf of drawer i.e. Darson Securities (Pvt.) Limited to Mr. Ammar-ul-Haq, CEO of the Respondent and no where in the agreement it is written that the shares are being loaned to the Respondent or its Clients. Further, the authority letter only gives authority to Mr. Ammar-ul-Haq to sell the shares and none of the authority letter mentioned that the authority is being given to the Clients who engaged in Blank Sales. Therefore, the above mentioned agreements can not be taken as valid borrowing agreements. Therefore, it is clear that the Respondent had executed Blank Sales on behalf of its Clients without having any pre-existing interest in the shares before sales. Therefore, the Respondent by executing the trades given in the Annexure has violated the Regulation 4 of the Short Selling Regulations.

8.5 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 direction made or given hereunder, in terms of sub rule (iii) has contravened the rules and regulations of the exchange, in terms of and 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.

8.6 In light of the above i.e. the fact the Respondent by making Blank Sales has violated the Short Selling Regulations thereby attracting sub rule (iii) of the Rule 8 of the Brokers Rule 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. 25,000 (Rupees Twenty 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

1. Name of nominee should be mentioned on the AOF.
2. List of Transaction fee, Commission to be charged by the Broker and other CDC charges to be levied should be attached with the AOF.

9.2 Findings of the Enquiry Officer revealed that;

- i) Name of nominee were not mentioned on the AOFs.
- ii) List of Transaction fee, Commission to be charged by the Broker and other CDC charges to be levied were not attached with the AOFs.

9.3 The Respondent made the following submission on these issues:

- The Respondent stated in its written reply that nominee is not mandatory as per the CDC regulations; therefore, it does not pressurize its clients for the same.
- Whereas, during the hearing the Respondent stated that in case of death of a client the shares can only be transferred on production of succession certificate and legally broker can not transfer the shares to the nominee, therefore, it did not find it necessary to force the clients to mention name of nominee on the AOFs.
- With regard to missing list of charges, the Respondent in its written reply contended that such charges vary from client to client and further there is no requirement of the Standardized AOF to attach such list with the AOF. However, during the hearing the Respondent stated that earlier it had adopted a practice of giving a copy of list of charges to clients at the time of opening of account but same was not attached with AOFs. However, after the Enquiry it has started to attach the list of charges with AOFs.

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

- With regard to Respondent's contention that name of nominee is not mandatory as per the regulations it may be noted that the Commission's directives vide which SAOF was prescribed clearly states that



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all the fields on the AOF must be filled. The field of nominee is not optional as per the SOAF and therefore, must be filled in at the time of opening of an account. The name of nominee is required in cases where the account holder does not contact the broker for a long time or the broker can not reach the accountholder then he may contact the nominee. Therefore, it is in both client's and broker's interest that nominee field should be filled in at the time of opening of account.

- I agree with the Respondents contention that shares and funds in a deceased client's account can not be transferred based on the name of nominee mentioned on the AOF and for that purpose succession certificate is required. However, as sated above it is mandatory as per the AOF that name of nominee should be mentioned on the AOF. However, I also agree with the Respondent that some of the client's avoid mentioning name of nominee on the AOFs.
- With regard to the Respondent's contention on missing list of charges I do not agree with the Respondent on the point that the said list of charges is not required to be attached with the AOFs. The point 5 of the enclosure requirements given at the end of the SOAF requires that the said list of charges must be attached with the AOFs. Therefore, by not attaching the said list with the AOFs the Respondent has failed to comply with the directives of the Commission.

9.5 Considering the above facts and the contentions of the Respondent, it is established that Respondent has failed to comply with Commission's directive and General Rules and Regulations of the LSE. In terms of Rule 8 of the Brokers Rules, more particularly sub rule (iii) and sub rule (v) therefore, where the Commission is of the opinion that a broker has inter alia failed to comply with requirements of the any directions of the Commission and/or has contravened the rules and regulations of the Exchange and/or has failed to follow any requirement of the Code of Conduct laid down in the Third Schedule, it may in the public interest, to take action under Rule 8(a) or (b) of the Brokers Rules.

9.6 In light of the above i.e. the fact the Respondent failed to comply with Commission's directive thereby attracting sub rule (v) of the Rule 8 of the Brokers Rule. However, based on the Respondents statement that he has already taken corrective actions and assured the Commission that such violations will not occur in future, 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 a 'caution' in these instances to the Respondent would suffice and I would further direct the Respondent to ensure that full compliance be made of all rules, regulations and directives of the Commission in the 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 :



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"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 Broker during the Review Period.
- 10.3 The Respondent made the following submission on this issue
- The Respondent in its written reply asserted that Ultra Trade System maintains a Chronological/time based order register up to 30 days of trading, however, order log of the day's activity is also maintained.
  - During the hearing the Respondent stated that it does maintain order register but it does not record time of receipt of order.
- 10.4 I have considered the contentions of the Respondent and I am of the view that electronic ledgers or the Daily Activity Log as mentioned by the Respondent is not a substitute for the Order Register as required under the Rule 4(1) of the 1971 Rules. The aforementioned Logs only record those orders that are placed by the Respondent into LOTS and not all the orders which were received from the clients and not entered into LOTS. Further, the said Log only records the time of placement of orders into the system and not the time of receipt of orders.
- 10.5 The Commission is also cognizant of the practical difficulties associated with the maintenance of such an Order Register manually. However, it is noted with disappointment that the brokerage house and LSE were not able to keep pace with evolution in technology and significant increase in trading activities whereby a system should have been developed to enable simultaneous recording of orders received from clients and their incorporation in a database to generate the Order Register as required under the Rule 4(1) of the 1971 Rules.
- 10.6 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 be made of all the laws, regulations and directives of the Commission in future for avoiding any punitive action under the law.
11. As stated above, the Respondent is penalized as follows:



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- a) As regards Issue No1, as stated above, a penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) is imposed.
- b) No punitive action is taken in relation to Issue No. 2 and 3 and a simple caution will suffice.

11.1 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 (SM)  
Securities Market Division