

**Securities and Exchange Commission of Pakistan
Enforcement and Monitoring Division
7th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad.**

Apr. 11, 2002

BEFORE THE COMMISSIONER (ENFORCEMENT)

In the matter of

**M/S. Sherwani Securities, Member, Islamabad Stock Exchange (Guarantee)
Limited**

Date of hearing: 15 February, 2002

Present: Mr. Abdul Basir Qureshi,
Advocate, Supreme Court of Pakistan, and
Mr. Tariq Aziz, Advocate on behalf of
Mr. Mashkooor Ahmed Khan Sherwani,
Managing Partner of Sherwani Securities,
Member, Islamabad Stock Exchange
(Guarantee) Limited

Syed Amir Masood, Director
(SM-III) of the Commission
Mr. Ikram-ul-Haq
Deputy Director (Law) of the
Commission

ORDER

M/s. Sherwani Securities is a brokerage firm, which is a member of the Islamabad Stock Exchange (Guarantee) Limited (ISE) since 1998. Mr. Mashkooor Ahmed Khan Sherwani (the Accused) is the Managing Partner of the said brokerage firm.

2. On receipt of a complaint dated 3-1-2000 (the Complaint), lodged by Mr. Abdul Aziz Khan Niazi (the Complainant), in which it was alleged that the complainant had purchased 15,00,000 shares of the value of more than Rs.2,00,00,000/- through the above mentioned Member of the Islamabad Stock Exchange in December 1999 but neither the

shares have been delivered to him nor the amount refunded, the matter was taken up with the Accused. It was also stated that the Accused had entered into a settlement agreement (the Agreement) with the Complainant on 12-01-2000. Later on, the Accused did not honour his commitments made in the Agreement and filed two civil suits against the Complainant titled as “Mr. Mashkoor Ahmed Khan Sherwani vs Abdul Aziz Niazi” pending in the court of Syed Muzaffar Ali Shah, Civil Judge, Islamabad and “M/s Sherwani Securities and another vs Abdul Aziz Khan Niazi” pending in the Court of Senior Civil Judge, Islamabad.

3. Under the circumstances the Commissioner (Securities Market) vide his letter dated 23.10.2000 directed the ISE to take appropriate action against the Accused as prima facie he was found responsible for breaching the investor’s trust. As the ISE failed to take any action against the Accused, the Commission initiated investigation proceedings in the matter and demanded certain information from M/s. Sherwani Securities and the Chairman, ISE, vide its letter dated 04-01-2001. A date of hearing was also fixed on 08-1-2001 by the then Executive Director (SMD) Mr. Shahid Ghaffar. Mr. Tariq Aziz, Advocate appeared on behalf of the Accused and demanded certified copy of the Complaint.

4. Meanwhile, the Accused filed a Writ Petition in the Hon’ble Lahore High Court, Rawalpindi Bench, and challenged the action initiated by the Commission and prayed for quashing of the investigation proceedings in progress against him. Since the Accused had expressed apprehensions against the Executive Director (SMD), the Hon’ble High Court on 27.4.2001 while disposing of the Petition, directed –

“to entrust the inquiry as envisaged by the letter of the Commission dated 4th January, 2001, to any Commissioner other than the Executive Director aforementioned. It was also directed that the new incumbent shall ensure that he allows the inspection of the record to the petitioner, hears him fully, takes down his points and passes a written and speaking order dealing with his objections.”

The Hon’ble High Court further directed the Accused –

“to appear before the Commission and co-operate with the Commission for the fair disposal of his case starting from the reply which he has to submit against the impugned letter.”

5. Pursuant to and in compliance with the Hon’ble High Court’s directions, the Commission assigned the case to me in the capacity of Commissioner (Enforcement) for disposal. Mr. Tariq Aziz, Advocate, the counsel for the Accused, was provided an opportunity, as directed by the Hon’ble High Court, to inspect the record and to obtain certified copies of the required documents. The said learned Counsel, after inspection of the record twice, demanded copies of various documents, which were supplied to him on 22.8.2001.

6. Subsequently, the counsel of the Accused exchanged certain correspondence with the Commission and ultimately on 22-11- 2001, furnished an incomplete written reply of the Commission's letter dated 4-1-2001 along with certain documents. After careful examination of the written reply and the documents, a Show Cause Notice dated 06.2.2002 (the Show Cause Notice) was issued which, contained the following charges against the Accused:

- i. Mr. Mashkooor Ahmed Khan Sherwani being managing partner of 'Sherwani Securities' was under obligation to provide true and complete information as ordained under sections 20(7) of the Securities and Exchange Commission of Pakistan Act, 1997 (hereinafter referred to as "the Act"), section 21(4) of the Securities and Exchange Ordinance, 1969 (hereinafter referred to as "the Ordinance") and letter dated 04-01-2001 of Mr. Aamer Masood, Director (SM-III) on behalf of the Commission. In spite of obtaining copies of certain documents and also inspecting the record on several occasions, he had failed to furnish true and complete information. This attracted section 20(7) of the Act and 21(4)(b) and 22(1) of the Ordinance.
- ii. In pursuance to the order of the Hon' able Lahore High Court, Rawalpindi Bench, Rawalpindi, in writ petition No.39/2001, Mr. Sherwani was required to provide the information documents demanded by the Commission pertaining to the business relationship between Sherwani Securities and Mr. Abdul Aziz Niazi, but he withheld the same and willfully avoided to furnish the requisite information. This was clear violation of the provisions of sections 20(7) of the Act and sections 21(4)(b) and 22(1) of the Ordinance.
- iii. The information provided by him & his legal adviser vide letters dated nil and dated 27-12-1999 purportedly sent to Mr. Abdul Aziz Niazi was found irrelevant and false as a result of the probe made into the relevant record of the Central Depository Company (CDC). This was in violation of section 18 of the Ordinance.
- iv. In an undated incomplete reply of his counsel to the letter of the Director (SM-III) dated 04-01-2001, the Commission was informed that sale of Mr. Abdul Aziz Niazi's shareholding in SNGPL and SSGPL was made on his specific instructions. In his letter dated 27-12-1999 it was alleged that Mr. Abdul Aziz Niazi's shareholdings in SSGPL and SNGPL have been sold upon his instructions. However, the contents of the said letter contradicted with the Central Depository Company's report for the relevant period, the ledger account and the trade confirmation of Mr. Abdul Aziz Niazi which do not show any sale ever occurred on behalf of Mr. Abdul Aziz Niazi on 27-12-1999. In fact he admitted vide his letter dated 27-12-1999 for not recording the sale of Mr. Abdul Aziz Naizi's shareholding in the aforesaid companies. This violated Rule 8(1)(a) & (g) of the Securities and Exchange Rules, 1971 (hereinafter referred to as "the Rules").

- v. As evident from his letter dated 27-12-1999, the sale of Mr. Abdul Aziz Niazi's shareholding was not recorded and he had not been provided with trade confirmation in accordance with Rule 4(4) of the Rules. The ledger statement covering the alleged trade executed on behalf of Mr. Abdul Aziz Niazi on 27-12-1999 did not indicate any sale of his SSGPL and SNGPL shareholding. But the settlement deed dated 12-01-2000 executed between M/s. Sherwani Securities and Mr. Abdul Aziz Niazi revealed that M/s. Sherwani Securities were willing to credit Mr. Abdul Aziz Niazi with the proceeds of sale of SSGPL and SNGPL shareholding at respective closing rate of the said shares as on 27-12-1999 plus Rs.2/- premium on SSGPL's shares and Rs.2.50 premium on SNGPL's shares and in fact Sherwani Securities first recorded the sale of Mr. Abdul Aziz Niazi's shareholding on 12-01-2000. Therefore, Mr. Sherwani executed the sale of Mr. Abdul Aziz Niazi's shareholding on 12-01-2000 when the closing rate of SSGPL was Rs.21.95 and of SNGPL was Rs.18.30. Hence, he by doing so, gave an understanding to Mr. Abdul Aziz Niazi in believing that he had sold his shareholding in the said companies on 27-12-1999 while it was not done so. By doing so he violated the provisions of section 17(a) of the Ordinance.
- vi. Mr. Sherwani induced Mr. Abdul Aziz Niazi to keep on trading through M/s. Sherwani Securities under compulsion by saying that he will only then record sale of his said shareholdings and he also used this threat to force him to enter into a settlement agreement dated 12-01-2000. Therefore, by doing so he violated the provisions of section 17(d) of the Ordinance.
- vii. Mr. Sherwani had executed the sale of Mr. Abdul Aziz Niazi's shareholdings in SSGPL and SNGPL on 12 January 2000 on which date the closing rates were Rs. 21.95 and Rs. 18.30 respectively. Sherwani Securities, however, did not credit the full proceeds of such sales to Mr. Abdul Aziz Niazi as was required by him under contractual requirements and norms of business in the securities markets. Instead, he agreed, in the settlement agreement dated 12 January 2000, to pay Mr. Abdul Aziz Niazi the reduced sum of Rs. 12.10 plus Rs. 2 premium for the sale of SSGPL shares and Rs. 10.60 plus Rs. 2.50 premium for the sale of SNGPL shares. Therefore, he in violation of Rule 3(c)(iv) of the Rules had suspended payment of the balance amount of the sale proceeds of the sale of SSGPL and SNGPL shares to Mr. Abdul Aziz Niazi.
- viii. The CDC vide its letter dated 16 January 2001 had informed that Mr. Abdul Aziz Niazi has an investor Account No. 64 with the CDC and that no sub-account exists under his name lying with M/s. Sherwani Securities. However, the trading records/ledger statements provided by M/s. Sherwani Securities to Mr. Abdul Aziz Niazi indicated that no trade executed on behalf of Mr. Abdul Aziz Niazi was channeled through his above mentioned investor account. Furthermore, there was no record of any authorization being given in accordance with Section 24(2) of the Central Depositories Act, 1997 (CD Act) for Sherwani Securities to handle the book entry securities beneficially owned by Mr. Abdul Aziz Niazi in Sherwani Securities own brokerage house accounts. Therefore, he committed violation of Section 24(2) of the CD Act.

7. On 6.2.2002, the date of hearing, Mr. Mashkooor Ahmed Khan Sherwani along with his counsel Mr. Tariq Aziz Advocate appeared before me. The Accused presented an application, seeking adjournment on the ground that his senior counsel Mr. Abdul Basir Qureshi was busy in the superior courts. The Accused also informed that the reply to the Show Cause Notice was to be submitted later on. The proceedings were adjourned for 15-02-2002. On 15-02-2002, the Accused along with both of his counsels appeared who argued the case in detail.

8. I have carefully perused the entire record of the case, including the documents submitted by the Accused and heard at length the learned counsels for the Accused. My findings on allegations contained in the show cause notice are as follows:

Preliminary Objections Raised by the Accused

9. Before I proceed to the merits of the case, I think it expedient to dispose of the preliminary submissions and objections raised by the Accused in his written reply to the Show Cause Notice.

10. The counsel of the Accused contended that the requisite reply/information called by the Commission could not be supplied by the Accused because he had not been provided with the certified copies of the complete record pertaining to the matter. In this context, I have observed that opportunity of inspection of record of the case was duly provided to the Accused and his counsel and copies of the documents demanded by them also provided. The Accused never objected as to the genuineness and origin of any of the documents. Even otherwise most of the documents are either part of the record of the Accused or ISE. The objection is, therefore, devoid of any merit and is turned down.

11. It was further contended that there had been lack of communication between the Accused and the Commission and that the Accused had never been heard in person. Suffice it to say here that proceedings against the Accused have been initiated afresh pursuant to the order dated 27.4.2001 of the Hon'ble Lahore High Court, in the writ petition filed by the Accused. A Show Cause Notice was issued. The Accused submitted his reply to the Show Cause Notice and the opportunity of being heard was provided to him on 6.2.2002. The case had to be adjourned for 15-02-2002 on the request of the counsel of the Accused because the senior counsel of the Accused was busy with his cases before the superior courts. The hearing was conducted on 15-02-2002 in presence of the Accused and his legal advisers Mr. Abdul Basir Qureshi and Mr. Tariq Aziz Advocates. These findings are given after hearing the Accused and his counsels and perusal of the relevant record. This objection is also set aside.

12. The third objection was raised that the Complaint does not make out a case cognizable by this Commission. My detailed findings on different allegations and discussion of relevant provisions of law, which have been violated by the Accused, clearly show that the Commission can take cognizance of the matter. It is also obvious from directions of the Hon'ble High Court mentioned as above that the Commission can take such cognizance. The objection has no merit and is dismissed.

13. The Accused further stated that the dispute is of civil nature and is already *subjudice* before the civil courts at Islamabad. It is noted that the civil litigation between the Complainant and the Accused pertains to their mutual settlement whereas the instant proceedings are being carried out on the basis of alleged irregularities by the Accused in the course of his business as a broker. There is no statutory bar, which ousts the jurisdiction of the Commission to take cognizance for violations of the laws being administered by the Commission. Moreover, the settlement of liabilities does not exonerate a person from prosecution for violation of law. The Hon'ble High Court has also declared vide its order dated 27.4.2001 that the Commission has jurisdiction in the matter.

14. It was also contended by the Accused that the matter under reference has been closed by the Commission and cannot be reopened. This objection does not appear to be justified keeping in view of the fact that these proceedings have been initiated afresh in pursuance of an order dated 27-4-2001 of the Hon'ble Lahore High Court. In fact the Commission had closed the matter at a stage when the assurance was given by the ISE and a Settlement Agreement had been executed between the Accused and Mr. Abdul Aziz Niazi. Subsequently, when Mr. Niazi complained again in July 2000, the Commission took up the matter and found that all issues concerning compliance to the terms and conditions of the Settlement Agreement were being adjudicated upon by a court of competent jurisdiction. However, as submissions and evidences had been placed on record, which indicated violation of the Securities and Exchange Ordinance, 1969, the Commission being regulatory agency took cognizance of the violation and initiated investigation proceedings.

I, now embark upon the merits of the case and give my findings in detail as below:-

Allegation No. 1

15. The Counsel for the Accused while defending the allegation No. 1, denied the charges and contended that his client could not supply the complete information because he was not provided certified copies of certain documents and that the allegations are misconceived due to misreading of the documents/record supplied by the Accused.

16. He submitted that section 22 of the Securities and Exchange Ordinance, 1969, being the penal provision for the non-furnishing of documents required under Section 21 of the Securities and Exchange Ordinance, 1969, provides for the imposition of a penalty on the grounds of a "failure or refusal" or "contravention" in compliance rather than upon the quality of the information supplied. He further pleaded that, as the reply to the Commission's letter dated 4th January, 2001 was found incomplete and unsatisfactory the same constituted neither a failure nor refusal nor contravention as required under Section 22 of the Securities and Exchange Ordinance, 1969. Looking carefully at the undated reply of the Respondent to the Commission's letter dated 4th January, 2001, I find that Mr. Tariq Aziz has categorically made the following statement in paragraph 1 thereof:

“Uncertified copies of some of the documents have been provided. The Respondent is therefore handicapped to file complete reply. However, in compliance to the Order dated 27 April, 2001 of the Hon’ble Lahore High Court Rawalpindi Bench, Rawalpindi, a reply is being submitted hereunder, which may be considered as incomplete and respondent may graciously be allowed to complete the reply after provision of certified copies of documents.”

17. From a reading of the above excerpt, Mr. Tariq Aziz, Advocate on behalf of the Accused, is clearly informing the Commission that a full and complete reply to its letter dated 4 January, 2001 is not being provided therein. Instead of providing a full reply, Mr. Tariq Aziz asserts that such a complete reply cannot be provided unless certified copies of the Commission’s record of the investigation are obtained by the Accused. Looking at the powers of the Commission in calling for documents in pursuance of an investigation, enquiry and/or proceedings under Section 21(2) and (4) of the Securities and Exchange Ordinance, 1969 it is found that, inter alia, members of a Stock Exchange “shall furnish such information and documents in his custody or power or within his knowledge relating to or having a bearing on the subject-matter of the enquiry as the person conducting the enquiry may require.”

18. I also find that, after a close perusal of questions 1 to 4 posed to the Accused in the Commission’s letter dated 4th January, 2001, reveals that these can only be answered by records required to be maintained by a member of a stock exchange under Rule 8 of the Securities and Exchange Rules, 1971. Question 2 requires the Accused to inform the Commission about the rate the shares of SSGPL and SNGPL were sold and why the amount was not credited to the account of Mr. Abdul Aziz Niazi immediately. It would not be out of place to state here that Mr. Tariq Aziz, on behalf of the Accused, in his undated reply to the Commission’s letter dated 4 January, 2001 does not answer the question of why the sale (if any occurred) was not credited immediately. Questions 3 and 4 require the Accused to inform the Commission under what circumstances the Settlement Agreement dated 12 January, 2001 was entered and what the terms and conditions of the same exactly were. Therefore, I am of the considered view that the information and documents required from the Respondent definitely constitute “information and documents” in the “custody or power or within his knowledge”.

19. In light of the above, I am of the considered view that the allegations made in the Show Cause Notice against the Accused as to his providing an incomplete and unsatisfactory reply cannot be deemed to mean “incomplete” and “unsatisfactory” on a subjective test but rather on an objective one. Mr. Tariq Aziz clearly states in his undated letter that an “incomplete” reply is being provided from which it can reasonably be concluded that certain information is being willfully withheld. Such a conclusion gains greater force when reading over the documents and submissions made pursuant to the Show Cause Notice wherein the Respondent’s reply to the questions posed in the letter dated 4 January, 2001 are finally crystalized. As such, the incomplete reply is unsatisfactory for the purposes of the SEC while in the midst of fulfilling its regulatory duties with respect to an investigation. Furthermore, I find that an adverse presumption on the genuineness of the documents and information brought forth at a much later stage

can be made (i.e. the suspense account, the loss account and the counter party being Intergain which allegedly failed to make delivery of the shares).

20. For the above mentioned reasons I find that the Respondent has willfully refused and failed to provide the information required of him in the SEC's letter dated 4 January, 2001 and has contravened Section 21(2) and (4)(b) of the Securities and Exchange Ordinance, 1969 and Section 20(7) of the Securities and Exchange Commission of Pakistan Act, 1997.

Allegation No. 2

21. With regard to this allegation, the Accused, in his written reply to the Show Cause Notice, denied that he had withheld any information or willfully avoided furnishing the same in response to the letter dated 08-10-2001 of the Commission.

22. However, in his letter dated 18-10-2001, the Accused simply chose not to answer any of the questions contained in the letter of the Commission dated 8-10-2001, on the pretext that a lot of time was required to dig out the documents and that the answer could not be furnished due to non provision of certified copies of certain documents. In his second letter dated 22-11-2001, the Accused attached certain documents, discussed in detail below, thereby showing that he was furnishing the requisite information.

23. The Accused has contended in both the letters dated 18-10-2001 and 22-11-2001 that he is unable to supply the full information because of non-provision of certified copies of certain documents. The answer to this objection has already been given during my findings on preliminary objections. It is noted here that opportunity of inspection of record of the case was duly provided to the Accused and copies of the documents were also provided to him. The Accused never objected as to the genuineness and origin of any of the documents. Even otherwise most of the documents are either part of the record of the Accused or ISE.

24. The Accused's reply dated 22-11-2001 does not answer most of the questions raised by me. Some of the answers submitted by him are evasive.

25. In my letter dated 08-10-2001, I required the Accused to supply documentary evidence of purchase and subsequent sale of shares of the Complainant and the authorization by the Complainant of such sale and purchase. Mr. Tariq Aziz's letter dated 22.11.2001 on behalf of the accused did not expressly answer any of the questions raised but instead he annexed the ledger accounts of Intergain Securities and the Complainant; trade confirmations of 18-12-1999 and a CDC statement of 27-12-1999 which he alleged are 'self explanatory'. It is quite apparent from the letter that the Accused is attempting to be evasive in replying to the questions with an intention to confuse and mislead the Commission.

26. Notwithstanding the foregoing and from a detailed analysis of the questions requiring comprehensive answers and the reply provided by the Accused vide Mr. Tariq Aziz's letter dated 22 November, 2001, I find the following on each question raised:

“a) Documentary evidence in support of the purchase and disputed sale of the shares of SNGPL and SSGPL which should include CDC statements, ledger statements, settlement (hawala) contracts with counter selling and buying parties respectively and signed confirmation from Mr. Niazi authorizing the said transactions.”

(a) In reply to the above question, the Accused has neither explained who exactly was the counter party to either the purchase or the sale nor has he provided full documentation evidencing any purchase or sale. However, the purchase of SNGPL and SSGPL are being reflected in Mr. Abdul Aziz Niazi's ledger statements as having occurred on the 18th, 20th and 21st of December, 1999. Correspondingly, the Accused is showing sale positions in the sub-account of Intergain, but only for the 18th and 20th of December, 1999. There is no counter party that has been shown for the purchase of shares by Mr. Abdul Aziz Niazi on the 21st of December, 1999. The Accused has only now (over four months after I requested the information) specifically and expressly claimed, in his reply to the Show Cause Notice, that Intergain was the counter party for all the purchases of Mr. Abdul Aziz Niazi, yet to this day he has not shown all the corresponding sale positions as discussed herein. Furthermore, the Accused has also not provided full documentary evidence as required of the purchase of the shares as no payment to Intergain has been reflected. In fact, he has maintained complete silence on the mode and method of payment if at all he made any payment on behalf of Mr. Abdul Aziz Niazi

(aa) Further to the above, the Accused provides CDC reports showing that 315, 649 shares of SNGPL are lying in his brokerage house and over 127,000 shares of SNGPL are lying in his sub-account held with Fidelity Investment and that a few shares of SSGPL shares are also lying in his brokerage house. The foregoing evidence provided is misleading as, without any explanation of the same, it appears that the Accused wants the SEC to believe that the shares of SSGPL and SNGPL are being kept by the Accused and that some purchase on behalf of Mr. Abdul Aziz Niazi has taken place in his own brokerage house as well through Fidelity Investment. However, this is incomplete contradiction to the Accused's stand taken in his reply to the Show Cause Notice as in the latter he explains that no shares were ever delivered by Intergain pursuant to the alleged purchase.

b) “Identify amount of sale proceeds as a result of the sale of shares of SNGPL and SSGPL and whether the sale proceeds were credited to the account of Mr. Niazi, if not, why?”

(b) Mr. Tariq Aziz, on behalf of the Accused, does not reply to the above question in his letter dated 22 November, 2001 as no explanation is forthcoming as to why the sale proceeds, if any, were not paid to Mr. Niazi upon the alleged sale having taken place. In fact, the credited amount showing on 12 January, 2000 in Mr. Abdul Aziz Niazi's ledger statement does not even reflect credit for the full 1,500,000 shares being allegedly sold.

The same, however, cannot be read along with the Settlement Agreement dated 12 January, 2000 as it refers to the Accused's obligation to provide shares to Mr. Abdul Aziz Niazi and not any credit accruing pursuant to a sale.

c) If the answer to (b) is yes, please provide ledger statements showing the sale proceeds credit to the account of Mr. Niazi."

(c) For the reasons mentioned above with respect to question (b) in my letter dated 8 October, 2001, I find that The Accused has not answered question (c).

d) Whether the purchase and disputed sale of the shares of SNGPL and SSGPL was carried out at the Islamabad Stock Exchange (ISE) or through some member at the other exchange(s)?"

(d) By supplying the ledger statement of Intergain with the letter dated 22 November, 2001 the Accused implies that Intergain was the seller of the SNGPL and SSGPL shares. He withholds the documents allegedly showing that he was the purchaser of the shares when Mr. Abdul Aziz Niazi sold the same. No mention is made anywhere of this in Mr. Tariq Aziz's letter dated 22 November, 2001 on behalf of the Accused.

e) If the transactions in (c) above were carried out through some member(s) at the other exchange(s), please identify those member(s)?"

(e) The Accused fails to explain the answer to this question. The CDC statements that the Accused attaches to the letter dated 22 November, 2001 appear to be an attempt by the Accused to show that certain shares were bought on behalf of Mr. Abdul Aziz Niazi through the Accused's account in Fidelity Investment.

f) Identify outstanding position, if any, of Mr. Niazi at the time of the alleged disputed sale of SNGPL and SSGPL and the security margin deposited with you by Mr. Niazi and whether any shortfall existed?

(f) The Accused offers no reply or information to the above question.

g) If answer to (c) is yes, whether Mr. Niazi was notified in writing of such shortfall and asked to deposit the same?

(g) The Accused offers no reply or information to the above question.

h) Did Mr. Niazi ever fail in meeting his obligation towards you in respect of his trading positions, if yes please provide documentary evidence to substantiate the same?

(h) The Accused offers no reply or information to the above question.

i) Please explain whether the security / cash available in the account of Mr. Niazi was pledged with the exchange/ member to meet the exposure requirements of your brokerage

house towards the clearing house / member or for any other business concerns/ purposes, if yes, provide written authority of Mr. Niazi to allow the same?

(i) & nbsp; The Accused offers no reply or information to the above question.

j) You were going through financial difficulties, as alleged by you. What are the details of the financial difficulties?

(j) The Accused offers no reply or information to the above question even though it is specifically stated in his plaint in Civil Suit that the dispute between him and Mr. Abdul Aziz Niazi arose due to the financial difficulties the Accused was facing in meeting his obligations to the Islamabad Stock Exchange clearing house.

In view of the above, it is evident that the Accused intentionally withheld the requisite information and avoided to furnish the same as demanded by the Commission. He, therefore, violated the provisions of section 20(7) of the Act and section 21(4)(b) of the Ordinance.

Allegation No. 3

27. With respect to the third allegation raised in the Show Cause Notice, The Accused has replied that the same is misconceived due to a misreading or non-reading of the documents supplied. The Accused submitted that the ledger accounts attached to his letter dated 22 November, 2001 shows that the seller of the SNGPL and SSGPL shares to Mr. Abdul Aziz Niazi was Intergain (a sub-account holder in his brokerage house) and the transaction was a cross trade. The Accused further submits that Intergain failed to make delivery of the shares when required to do so in accordance with the clearing and settlement schedule of the Islamabad Stock Exchange, a fact of which the Accused alleges he informed Mr. Abdul Aziz Niazi. However, as Mr. Abdul Aziz Niazi was allegedly of the view that settlements were the problem of the broker to handle, the Accused opened a suspense account to record the “disputed sale transaction.” The Accused argues that when Mr. Abdul Aziz Niazi instructed the sale of all his SNGPL and SSGPL shares on 27 December, 1999, ultimately the substantial loss had to be transferred to Sherwani Securities account. The Accused argued that due to the failure of Intergain to meet its obligations, the purchase transaction of Mr. Abdul Aziz Niazi did not show in the CDC report or the clearinghouse records. The Accused also submits that the confirmation of Mr. Abdul Aziz Niazi’s sale of shares on 27 December, 1999 was made orally and in writing.

28. He further submitted that all the shares of SSGPL and SNGPL were allegedly purchased from Intergain in an alleged cross trade. The entire shares were purchased by Mr. Abdul Aziz Niazi on the 18th, 20th and 21st of December, 1999. He also states in his reply to the Show Cause Notice that Intergain failed to make delivery of the shares when required to do so in accordance with the schedule of the Islamabad Stock Exchange clearing house. However, in the trade confirmations of the purchases of 18th and 20th December, 1999 the settlement date is noted as 29 December, 1999. Therefore, there

were still two days left for Intergain to make delivery of the shares and Intergain could not have been deemed to have failed to meet their obligations up to and at the time Mr. Abdul Aziz Niazi allegedly ordered the sale of his shares on 27 December, 1999. The Accused clarified that since delivery was not made by Intergain, the transaction could not be recorded in a CDC report or by the clearing house. In fact, such transactions, being outside the ambit of the clearing house are required to be notified to the Islamabad Stock Exchange by the member in whose brokerage house the transaction has taken place. The Accused has failed to provide a copy of the such notification.

29. Notwithstanding the discrepancies outlined above, the Accused has failed to satisfy that the allegation made in point 3 of the Show Cause Notice is incorrect. In fact, the Accused informed the Commission in his undated reply that he had sold the shares on the instructions of Mr. Abdul Aziz Niazi. However, now in reply to the Show Cause Notice, it has been informed that Intergain (the alleged counter party to Mr. Abdul Aziz Niazi's purchase) failed to make delivery of the shares. In fact, the Settlement Agreement dated 12 January, 2000 (16 days after the alleged sale of the shares) itself states in the recitals (being an expression of the intention of parties entering into a contract) that M/s Sherwani Securities is obligated to deliver shares of SSGPL and SNGPL in lieu of related payments made by Mr. Abdul Aziz Niazi to the Accused. Had there been a sale of the said shares M/s Sherwani Securities would not be obliged to deliver any shares to Mr. Abdul Aziz Niazi. Therefore, it can be concluded that since the purchase of shares never took place on behalf of Mr. Abdul Aziz Niazi, the same could not be sold on the subsequent date of 27th December, 1999. In light of the foregoing, I am of the considered view that the Accused has given a false statement in violation of Section 18 of the Securities and Exchange Ordinance, 1969.

Allegation No. 4, 5, 6 & 7

30. As regards the allegations at serial Nos. 4 to 7 the counsel of the Accused denied the charges and submitted that these are misconceived. He clarified that a suspense account was created because of Intergain (another client of the Accused from whom shares of the complainant were allegedly purchased) failed to deliver the shares and honour its transaction, the sale of shares was in fact executed and recorded on 27-12-1999, there was no threat to the complainant, and that the market rate as at 27-12-1999 was applicable to the sale of shares of the Accused.

31. The ledger statement of the Complainant submitted by the Accused shows that the accused was required, under the instructions of the Complainant, to purchase 800,000 shares of SSGPL and 700,000 shares of SNGPL as recorded in the ledger statement of the Complainant on 18-12-1999, 20-12-1999 and 21-12-1999 at various rates, allegedly executed as cross trade (or Client to Client transaction ("C-to-C")) with Intergain. In his written reply to the show cause notice, the Accused has brought in a totally new argument stating that the shares bought in the account of the Complainant were never delivered by the counter selling party that is 'Intergain' and hence Intergain failed to settle the transactions and resultantly the Accused allegedly transferred the outstanding sale in the account of Intergain to a suspense account.

32. It has been observed that the alleged transfer of sale position from the account of Intergain to the suspense account is reflected in the ledger statements of Intergain and the suspense account on 27-12-1999 (with matching voucher numbers). However, the trade confirmations for the purchase transaction on 18-12-1999 show a clearing/settlement date of 29-12-1999, which negates the reasoning shown for the transfer of the outstanding sale position on 27-12-1999 (two days before settlement was required).

33. It is inferred from the foregoing that the Accused was aware of the default in settlement of transaction (delivery of shares) by Intergain on or before 27-12-1999, which again undermines the statement made by the Accused in his written reply to the Show Cause Notice where he states that the suspense account was created as a consequence of the failure on part of Intergain to deliver the shares and honour its transaction. Indeed, failure to settle the alleged transaction had not occurred by 27-12-1999.

34. Since the settlement of the purchase transaction on 18-12-1999 did not take place, the funds belonging to the Complainant should have remained intact with the Accused. Hence the argument that non-delivery of shares by Intergain resulted in difficulty faced by the Accused to meet his contractual obligations towards the Complainant is false and misleading.

35. The Accused did not make payment to Intergain for the alleged purchases, which would otherwise be recorded in the ledger statement of Intergain and there is also no evidence to the contrary. It is, therefore, established that the financial difficulty on non-delivery of shares by Intergain is false.

36. The Accused has alleged that the sale of 655,000 shares of SNGPL and 770,000 shares of SSGPL purportedly on 27-12-1999 was again a Client to Client transaction with Intergain at a time when it was known to the Accused that the delivery of the same shares purchased earlier on 18-12-1999 on account of the Complainant will not materialize. Further the sale quantities as recorded in the ledger statement of the Complainant do not match up with the alleged sale quantities shown in the suspense account nor with the Intergain account on 27-12-1999.

37. The sale of shares of 655,000 shares of SNGPL and 770,000 shares of SSGPL, which allegedly occurred on 27th December, 1999 and recorded on 12th January, 2000 in the ledger statement of Mr. Abdul Aziz Niazi, has corresponding counter buying position as on 12th January, 2000 in the account of the Accused and which has been transferred to the Suspense Account on the same date. Hence all entries to show the alleged sale of shares of SNGPL and SSGPL have been recorded in the ledger statements of Mr. Abdul Aziz Niazi, Accused own account and the Suspense Account on 12th January, 2000. Further, the trade confirmation of the alleged sale on 27th December, 1999 but allegedly recorded on 12th January, 2000 and the alleged letter of the Accused on same date do not indicate that the order was executed for the member's own account or from the market as required under Rule 4 (f) of the Securities and Exchange Rules 1971.

38. The alleged trade confirmation dated 12-01-2000 of the sale of shares of SNGPL and SSGPL on 27-12-1999 on account of the Complainant as appended with the reply dated 22-11-2001 to Commission's letter dated 8-10-2001 is signed by some one other than the Complainant, whereas the purchase confirmations of shares of SNGPL and SSGPL have been signed/received by the Complainant himself. It is pointed out here that the trade confirmation for the alleged sale on 27-12-1999, but purportedly recorded on 12-01-2000, shows a clearing/ settlement date of 19-01-2000 as against the clearing/settlement date as applicable to a transaction executed on 27-12-1999.

39. The record shows that no sale (and counter buy) was ever recorded on 27-12- 1999 in any of the ledger statements, provided by the Accused, pertaining to the accounts of the Accused, the Complainant, the suspense account or Intergain.

40. The transactions in the suspense account with corresponding entries in the Intergain account on 27-12-1999 have been referred to by the Accused as both the shifting of outstanding sale in the account of Intergain as executed on 18-12- 1999 in the first instance as well as the alleged sale on 27-12-1999 in the second instance, which undermines the arguments of the Accused, as the same set of entries cannot be attributed to two different transactions with different quantities carried out on different dates. The Accused has failed to clearly identify the counter buying party to the alleged sale on 27-12-1999 which would be Intergain in the second instance as noted above and the Accused himself, if seen per the alleged recording on 12-01-2000. The contrary stance of recording the sale of shares of SNGPL and SSGPL on 27-12-1999 as well as on 12-01-2000 is, therefore, misleading.

41. Ledger statement of the Complainant for the period 18-12-1999 to 29-12-1999 duly signed and stamped by the Accused as on 30-12-1999 shows the shareholding of the Complainant as being 700,000 shares of SNGPL, 2000 shares of Mirza Sugar Mills and 800,000 shares of SSGPL. The claim on behalf of the Accused that the sale of shares of SNGPL and SSGPL was executed on 27-12-1999 on instructions of the Complainant is not tenable keeping in view of his providing a signed / stamped ledger statement to the Complainant on 30-12-1999 without any mention of such sale.

42. It is noteworthy to point out here that the mere recording of purchase and sale entries in the ledger statements of accounts held with the Accused carry little weight, if any, as they are prone to easy manipulation and tampering, particularly, in absence of third party confirmations such as those of the CDC and the clearing-house of the respective stock exchange.

43. It is abundantly clear that the Accused has deceived the Complainant into believing that his order to purchase shares of SNGPL and SSGPL as on 18-12-1999, 20-12-1999 and 21-12-1999 was effected by the Accused and the funds available in the account of the Complainant were utilized for the same.

44. This is further substantiated by the evidence that the claim filed by the Accused against Intergain with the ISE per Circular dated November 2, 2000 of the ISE is only for

the cash amount of Rs. 1,288,239/- and there is no claim in respect of the alleged purchase of shares from Intergain. As the Accused has not filed a claim for the alleged purchases from Intergain. It is evident that no purchase transaction was executed with Intergain as a Client-to-Client transaction.

45. A close perusal of the ledger statement of Intergain shows that the Accused made certain payments out of the account of Intergain relating to unknown transactions, in spite of his alleged existing claim against Intergain amounting to over 17 million Rupees. This is unbelievable in the attending circumstances as discussed above.

46. The Accused's inactive and unrealistic approach towards Intergain by not filing claim for the shares, not referring the matter to the Arbitration Committee of the ISE for resolution, and not submitting the actual claim filed by the Accused against Intergain to the Commission even at the time of hearing and allowing payments out of the account of Intergain (for unknown transactions) are circumstantial evidence which indicate false statements being tendered by the Accused in alleging that the counter party to the purchase was Intergain.

47. It is enlightening to note that the Settlement Agreement dated 12-01-2000 between the Accused and Complainant is silent with respect to Client-to-Client transactions with Intergain. There is no mention of the alleged non-delivery of shares by Intergain.

48. The admitted stance of the Accused before the Civil Court and his submissions before the Commission have been inconsistent.

49. In para 12 of the plaint of the Second Suit the Accused has stated:

That having completed his buying of the shares of the two Gas companies in the manner stated hereinbefore, the Defendant approached the Second Plaintiff on 27-12-1999 and instructed him to sell his entire holding in Sui Southern Gas Company and Sui Northern Gas Pipelines Limited. Upon receipt of such instructions, the second plaintiff duly informed the defendant of his financial position and of the manner in which he had been dealing with the clearing house liabilities. The Second Plaintiff sought time for the payment of entire credit balance in the Defendant's account after selling his entire holding of Sui Southern Gas and Sui Northern Gas Pipelines Limited at their quoted market rates of 12.10 and 10.60 respectively.

50. In para Nos. 6&7 of the plaint of the Second Suit, the Accused has elaborated the critical situation faced by several members of the Stock Exchanges including the Accused due to the events along the Kashmir border and the Kargil affair which resulted in losses and default situation. In paragraph 9, the Accused mentions:

This put an immense pressure on the financial condition of the Members of the Stock Exchanges, and they were required to pool in all possible resources to meet their obligations. Similarly the First Plaintiff [(M/s. Sherwani Securities)], already in dire straits on account of defaults for after nuclear detonations in May 1998 had to dig deep

into the pockets to meet the 'Clearing House' obligations. At this stage the First Plaintiff had not only the Islamabad 'Clearing House' dues to clear but also dues in the accounts of the First Plaintiff with its corresponding Members of the Lahore and Karachi Stock Exchanges. The First Plaintiff was able to meet all these obligations despite the fact that his major defaulters from the post-nuclear test days from the recent Kargil Affair had failed to meet their account obligations...

51. The Accused has stated in para 10 of the plaint of the Second Suit:

That the first Plaintiff [M/s. Sherwani Securities] managed to reduce its liabilities by diverting all available funds into satisfaction of 'Clearing House' dues in accordance with the general practice in the business of stock exchanges. As a matter of practice, and now under direction from the regulator of the business namely Securities and Exchange Commission of Pakistan, all members of the Stock Exchanges are required to secure a certain portion of the values of trades as Margins or Security from the investor. The First Plaintiff [M/s. Sherwani Securities] used all such deposits to clear his liabilities and continued to provide for the shortfall by diverting, in return, all of its income from the brokerage fee/Commission etc.

52. It, therefore, transpires that the Accused utilized the cash funds as available in the account of the Complainant to provide for his obligations towards the clearing house and recorded the purchase of shares of SNGPL and SSGPL on 18 December, 1999, 20 December, 1999 and 21 December, 1999 in the ledger statement of the Complainant to satisfy him that the purchases have been carried out.

53. The Accused does not specifically state before the Civil Court that the counter party to the transaction did not deliver the shares of Complainant and that the settlement of the transaction never took place, which would expose the Accused to the argument that if the settlement of the said transaction never took place, it would naturally mean that the Complainant's funds would also be intact and hence no question would arise, of not returning the same to him. The liabilities of the Accused towards the Complainant, in pursuant to the Settlement Agreement, are, anyway, subject matter of the civil litigation pending adjudication with the civil courts at Islamabad. No findings as to returning of the Complainant's funds are therefore given.

54. The Accused alleges that the entire shares of the Complainant were sold by him on 27-12-1999, the date on which the Accused also allegedly transferred the outstanding sale position as of 18-12-1999 lying in the account of Intergain to the suspense account on non-fulfillment of transaction by Intergain. It is, therefore, contradictory for the Accused to state that the sale was executed on 27-12-1999 although the preceding buy position had yet not been settled /honoured.

55. The alleged claim of selling the entire shareholding of SNGPL and SSGPL is in itself false and incompatible with the record as the alleged quantities sold are 655,000 shares of SNGPL and 770,000 shares of SSGPL against purchase of 800,000 shares of SSGPL and 800,000 shares of SNGPL. In addition, the ledger statement of the

Complainant for the period 30-06-1999 till 12-01-2000 as submitted by the Accused with his letter dated 22-11-2001 shows that even after the alleged sale on 12-01-2000, 150,000 shares of SNGPL and 150,000 shares of SSGPL were lying in the account of the Complainant. Hence the submissions of the Accused and the record do not correspond with each other.

56. The above findings reveal beyond any doubt that the purchase of shares of SNGPL and SSGPL never occurred in substance/real terms and hence the question of subsequent sale of the same shares does not arise.

57. It is inferred from the preceding two paragraphs, that the Complainant wanted his shares to be deposited in his account. The Accused was under contractual obligation with the Complainant to purchase the shares and also to deposit the same in his account as instructed by him. The Accused has admitted that he failed to deposit the shares of the Complainant in his account, which also shows that the sale of the said shares was not executed.

Allegation No. 8

58. The allegation No. 8 is that CDC in its letter dated 16-01-2001 informed the Commission that the Complainant had an investor account No.64 with CDC and that no sub account exists under the name of the Complainant lying in Sherwani Securities. The records provided by Sherwani Securities to the Complainant indicate that no trade on behalf of the Complainant was channeled through the investor account No.64. Moreover there is no record of authorization for Sherwani Securities to handle the book entry of securities owned by the Complainant in Sherwani Securities brokerage house accounts.

59. The Accused in his written reply denied the charge. He attached photocopies of two account opening forms pertaining to account Nos. 1394 and 1194 respectively.

60. The Accused has, anyway, failed to show as to why the trade pertaining to the Complainant's shares was not channeled through the investor account No. 64 with the CDC. The Accused has also failed to rebut the charge that there exists no sub account with CDC under the name of the Complainant lying in Sherwani Securities and the Accused had no authorization to handle book entry securities on behalf of the Complainant.

61. My findings on allegation Nos.4 to 7 prove that the Accused actually made no purchase of shares on behalf of the Complainant and there was no subsequent sale of shares as alleged by the Accused. The question of handling or authorizing or permitting any handling of book-entry securities, as envisaged by Section 24(2) of the CD Act, 1997, does not, therefore, arise. The Accused is, therefore, not liable to any action under Sections 28, 29 or 31 of the CD Act, 1997. The allegation No.8 of the Show Cause Notice is, therefore, withdrawn.

62. In light of the comprehensive deliberation of facts mentioned above, I am convinced that:

(i) the Accused has failed to provide complete information as demanded by the Commission and has deliberately withheld information and refrained from providing details of transactions pertaining to purchase and sale of shares in violation of the provisions of section 21(2) & (4) (b) of the Ordinance and section 20(7) of the Act.

(ii) the Accused has also been found responsible for providing false statement in violation of section 18 of the Ordinance.

(iii) the Accused has also failed to maintain proper books of accounts in violation of the requirement of Rule 8(a) & (g) of the Rules. He has been found responsible for suspending payment to the complainant in terms of the provisions of Rule 3(c)(4) of the Rules.

(iv) the Accused is responsible for recording in the books, the transactions pertaining to purchase and sale of shares of SNGPL and SSGPL purchased and sold for and on behalf of the complainant in such a manner so as to deprive the complainant of his investment and in fact utilizing the funds for his own purposes. By doing so, the Accused has deceived the complainant and misappropriated the funds belonging to him. The Accused has been found responsible in having effected a purchase on the ledger statement to his own advantage which operated a fraud upon the complainant.

(v) the Accused has failed to observe the Code of Conduct of brokers as per 3rd Schedule to the Brokers and Agents Registration Rules, 2001. The 'code' requires that a broker shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business. Therefore, the Accused does not qualify for registration as a broker under the said Rules and is not eligible to do the brokers business.

63. Therefore, in exercise of powers of the Commission conferred under sections 22(1) of the Securities and Exchange Ordinance, 1969, I hereby impose a fine for violations of sections 18, 21 and Rules 3(c)(iv) and 8(a) & (g) of the Securities and Exchange Rules, 1971 prescribed under section 33 of the said Ordinance, an amount of Rs. 300,000/- in aggregate on the Accused to be deposited in the Commission's bank account maintained with the Habib Bank Limited and also hereby remove 'M/s Sherwani Securities' from the membership of the Islamabad Stock Exchange with immediate effect.

(**ABDUL REHMAN QURESHI**)
Commissioner (Enforcement)

Announced:
April 11, 2002
ISLAMABAD