

Before Shauzab Ali, Commissioner (SMD)

In the matter of Show Cause Notice issued to M/s. Enrichers (Pvt) Limited

Date of Hearing	September 20, 2019, October 23, 2019, September 30, 2020.
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Order-Redacted Version

Order dated November 10, 2020 was passed by Commissioner (SMD) in the matter of Enrichers (Pvt) Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show Cause notice dated September 02, 2019
2. Name of Company	Enrichers (Pvt) Limited.
3. Name of Individual*	The proceedings were initiated against the Company i.e. Enrichers (Pvt) Limited
4. Nature of Offence	Proceedings under Section 94 of the Futures Act, 2016 ("the Act ") for violations of the provisions of Rule 20(1)(a)(b) and Rule 20(2)(d) of the Commodity Exchange and Future Contract Rules, 2005 ("the Rules ") and sub-section (a), (b), (c), (d), (f) and (i) of the Section 57 of the Act.
5. Action Taken	<p>Key findings of default of Regulations were reported in the following manner:</p> <p>I have examined the submissions of the Respondent and its Representatives. In this regard, I observe that:</p> <ul style="list-style-type: none">i. With regard to the claim of Complainant No. 1 and 2, the Respondent has produced copies of DTAs signed by the complainants in its favor in contrast with the allegation levelled against the Respondent. Further, the Respondent also submitted that they have a standard practice of signing an Understanding of Procedures ("UOP") which though is not a regulatory or legal requirement but the Respondent had crafted for the purpose of transparency and awareness of the investor under which each investor is informed regarding the conflict of interest revocation of DTA and change of investor passwords of trading accounts etc. Key features of the said document have been detailed in the written response provided by the Respondent. Further, the Respondent during the hearing also contended that daily emails/ SMS were duly sent to the complainants regarding their trading activity.ii. With regard to Complaint No.1, it appears that the complainant has signed DTA in favor of the Respondent. Further, on reduction of account balance up to 25% each time Client one had signed three DTAs forms on three different



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dates as also provided by the Respondent. Whereas, for Complaint No. 2, the Respondent also signed a DTA at the time of account opening. Both the clients had also signed the UOP document with the Respondent. Further, the Respondent also provided copies of account opening form and commission agreed upon by Complainant No. 4 and provided DTA with respect to Complainant No.5. Moreover, the Respondent also submitted evidence of withdrawal of Complaint No.3.

In view of the submissions and documentary evidence by the Respondent, it may be noted that when a client entrusts control of his account to a broker, the broker assumes fiduciary responsibility to exercise that control in favor of the clients. Liability of excessive trading rests upon the breach of fiduciary duty that occurs if the broker subsequently abuses his control by engaging in a pattern of trading that advances self-interest in a manner detrimental to the interests of the customer. Churning involves excessive trading of a client's account by a broker for the sole purpose of generating brokerage commission as provided in Rule 20(2)(d) of the Rules. In one sense, excessiveness is a subjective determination. A volume and frequency of trading that might be acceptable for the account of a wealthy investor might be totally unacceptable for an investor of modest means who is interested in current income and conservation of capital. Thus, excessiveness could be determined according to client's financial resources and investment objectives. Another aspect to incorporate here is the degree of sophistication of the client in business and financial matters. The findings of the investigation prima facie reveal that the complainant no. 1 & 2 had very limited exposure to capital markets and financial knowledge and as per the information provided by the Respondent, they had both signed the DTA with the Respondent. It reveals that there was a high degree of client reliance on the broker in the instant cases which is an important factor to determine the fiduciary responsibility of the broker and the agency relationship with regard to the trading activity in the accounts of their clients. The findings of the investigation reveal evidence that the client was unsophisticated with regard to the knowledge of capital markets and commodities trading, that the broker had initiated trading into the accounts of the claimants and that the clients had invariably followed the brokers recommendations thus conclusive to the evidence of reliance placed on the knowledge of the Respondent regarding their investment objectives and financial goals.

The Respondent was inquired regarding the investment objectives of the clients in correlation to the trading activity carried out in their accounts. However, the Respondent had not obtained sufficient evidence regarding the client's income/ source of funds or obtained investment objectives as no such document or evidence was produced by the Respondent which may explain the trading activity in the claimants' accounts. The Respondent had failed to demonstrate knowledge of the client's financial position or investment goals in respect of their Know Your Customer/ Customer Due Diligence policy (KYC/CDD). Section 57 (d) of the Act also requires a broker to obtain information from their clients regarding their circumstances and investment objectives which might reasonably be expected to be relevant in enabling the broker to fulfil his fiduciary responsibility to its clients. These KYC failures did not equip the Respondent to modify their trading patterns in accordance with the financial position of investment goals of the Complainants. In these circumstances the Respondent cannot justify that it has ensured fair treatment of its clients in accordance with their risk appetite and investment goals. Admittedly commodity trading involves high frequency of trades which in turn leads to significant commission



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charges. The clients by signing the account forms and DTA in favor of the Respondent not only entered to client broker relationship and agreed to the commission structure but also entrusted his funds to the Respondent with the aim to earn profits. However, the Respondent, through apparently reckless exercise of DTA, the entrusted funds were mostly charged for Commission and loss on account of trading. The Respondent has a large clientele and therefore, all the more obligation to observe high standards of fair dealing with respect to its client's money. It is noted that realizing the inherent conflict of interest which existed in light of the DTA signed by the complainants the relevant regulatory framework has been amended and the signing DTA has been declared as unlawful.

In light of the observations as mentioned above, it was observed that the Respondent had failed to cater to the investor's interest and had carried out hefty trading in the accounts of the complainants while neglecting the client's investment objectives and financial positions. It was observed that some of the complainant had very limited exposure to commodities market, which has the most refined products of the capital markets, it was the duty of the management of the Respondent to fulfill their prime fiduciary responsibility towards its clients as provided under the Standard of Conduct of the Act. The broker's control over the account as established through the DTA and its lack of information regarding the client's investment objectives also indicates that the broker had carried out excessive trading in self-interest while ignoring the financial standing and objectives of its clients. The Respondent has therefore, contravened its fiduciary responsibilities as provided under Rule 20(1)(a)(b) and Rule 20(2)(d) of the Rules and sub-section (a), (b), (c), (d), (f) and (i) of the Section 57 of the Act.

The responsibility also lies with the investor to adequately equip himself with requisite knowledge to understand the products and risks associated with commodities market before investing. As observed in the instant cases, the Respondent had produced copies of DTA duly signed by certain clients which signifies the fact that the client had placed reliance on the Respondent for effective control of their account and trading activity without having adequate knowledge of the products of the commodities markets and its commission structure. The Respondent timely sent information regarding their trading activity through emails/ SMS however, the clients failed to raise concern or highlight the same when the trading was actively being carried out in their accounts. Some of the clients had not reviewed their accounts summary during the active trading and had subsequently realized when their investment had reduced to a minimal amount. Therefore, lack of awareness exists also on part of the clients who had only invested their money for the purpose of profit generation while ignoring the elements of risk and inherent conflict of interest arising due to the commission structure of the Respondent in the presence of DTA.

In the view of the foregoing and the admission by the Respondent, contravention of the provisions of Rule 20(1)(a)(b) and Rule 20(2)(d) of the Rules and sub-section (a), (b), (c), (d), (f) and (i) of the Section 57 of the Act, have been established. Therefore, in term of the power conferred under Section 94 of the Act & Section 22 of the Ordinance, a penalty of **Rs. 2,500,000/- (Rupees two million and five hundred thousand only)** is hereby imposed on the Respondent. The Respondent is advised to enforce the provisions of the relevant rules and regulations in letter and spirit.



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	<p>Furthermore, relevant department of the Commission is advised to undertake comprehensive inspection in respect of all activities being performed by the Respondent, to ensure its compliance with all applicable AML/CFT as well as prudential regulatory framework including but not limited to provisions of SECP AML/CFT Regulations, Futures Act, Rules & Regulations made thereunder, PMEX General Regulations and Regulations governing Market Making at PMEX, if applicable.</p> <p>Penalty Order dated November 10, 2020 was passed by Commissioner (SMD).</p>
6. Penalty Imposed	A penalty of Rs. 2,500,000/- (Rupees two million and five hundred thousand only) was imposed on the Company.
7. Current Status of Order	Appeal was filed against the Order.

Redacted version issued for placement on the website of the Commission.