



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

Before The Director (Securities Market Division)

In the matter of Show Cause Notice issued to

Engr. Mian Sajid Masood

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)2006/56 dated August 30, 2007
Date of Hearing	September 14, 2007
Present at the Hearing:	Mr. Sajid Masood
Date of Order	January 10, 2008

ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. MSW/SMD/LSE/1(5)2006/56 dated August 30, 2007 (**"the SCN"**) issued to Engr. Mian Sajid Masood (**"the Respondent"**), member of the Lahore Stock Exchange (Guarantee) Limited (**"LSE"**) by the Securities and Exchange Commission of Pakistan (**"the Commission"**) under Rule 8 of the Brokers and Agents Registration Rules, 2001 (**"the Brokers Rules"**) for violation of Rule 12 of the Brokers Rules and Clause A5 of the Code of Conduct contained in the Third Schedule of the Brokers Rules.
2. The brief facts of the case are that the Respondent is a member of LSE and is registered with the Commission under the Brokers Rules. An enquiry was initiated by the Commission in exercise of its powers under Section 21 of the Securities and Exchange Ordinance, 1969 (**"the Ordinance"**) and 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 broker during the period from April 01, 2006 to June 15, 2006 (**"the Review Period"**).
 - (b) to identify any and all the acts or omissions constituting the violation of the Ordinance and the Rules made thereunder.
 - (c) to identify violations of any other applicable laws, including but not limited to the Brokers Rules, Regulations for Short Selling under Ready Market, 2002 (**"Short Selling Regulations"**), General Rules and Regulations of LSE, Securities and Exchange Rules 1971 (**"the 1971 Rules"**) and directives issued by Commission from time to time.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

3. The findings of the Enquiry Officer revealed several instances of potential non compliances with applicable laws and regulations. A copy of the Enquiry Officer's report was sent to the Respondent on 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 instances, the SCN was issued to the Respondent under Rules 8 of the Brokers Rules stating that the Respondent has prima facie contravened Rule 12 of the Brokers Rules read with Clause A5 of the Code of Conduct contained in the Third Schedule to the Brokers Rules which are reproduced as under:

Rule 12- " A broker holding a certificate of registration under these rules shall abide by the Code of Conduct specified in the Third Schedule"

Clause A5 of the Code of Conduct- "A broker shall abide by all the provisions of the Securities and Exchange Commission of Pakistan Act, 1997 (**the Act**) and the rules, regulations issued by the Commission and the stock exchange from time to time as may be applicable to him".
5. On August 30, 2007, the Respondent was called upon to show cause in writing within seven days and appear before the undersigned on September 10, 2007 for a hearing, to be attended either in person and/or through an authorized representative. However, on request of the Respondent the hearing was re-fixed for September 14, 2007.
6. The hearing was attended by Mian Sajid Masood who argued the case. However, no written reply to the SCN was submitted.
7. A summary of contentions and objections that were raised by the Respondent in its earlier written submissions and during the hearing and findings and conclusion of the Commission on the same is as follows:
8. **Blank Sales ("Issue No. 1")**
 - 9.1 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"
 - 9.2 The findings of the Enquiry Officer revealed 28 instances of Blank Sales during the Review Period.
 - 9.3 The Respondent made the following submissions on the issue:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

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- The Respondent stated that instances given in the Annexure –A ("**the Annexure**") attached with the SCN are of negligible volume except for instances given at serial nos. 4 and 15.
- In case of instance given at serial no. 4 of the Annexure the Respondent stated that the client had opening position of 8,300 shares, therefore, blank sale is of 1,700 shares only.
- The Respondent further asserted that most of the sales given in the Annexure are result of typographical errors.

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

- The Respondent's assertion in connection with the Blank Sales given at serial no. 4 is accepted and after a review of documents provided in this connection I am satisfied that the said Blank Sale was of 1,700 shares and not 10,000 shares.
- However, the Respondent's assertion that the Blank Sales given in the Annexure are result of typographical errors does not absolve him from his obligation to comply with the Short Selling Regulations. It may be noted that the Respondent is responsible for each and every order placed through its terminals and further, the Code of Conduct set forth under the Brokers Rules required every member to exercise due care, skill and diligence while conducting his business. Further, it is the responsibility of the Respondent to put in place proper systems and controls to ensure that each order executed through his house fulfills the requirements of law. However, the execution of Blank Sales as given in the Annexure shows that the Respondent has violated Short Selling Regulations and the Respondent's house lacks proper systems and controls in place to prevent execution of such trades.

9.5 Considering the above facts and the contentions of the Respondent, it is evident that 28 Blank Sales have been made by the Respondent in violation of Regulation 4 of the Short Selling Regulations. In terms of Rule 8 of the Brokers Rules, sub rule (ii) where the Commission is of the opinion that a broker has inter alia failed to comply with any requirements of the Act or the Ordinance or of any rules or directions made or given thereunder, in terms of sub rule (iii) has contravened the rules and regulations of the exchange and in terms of sub rule (iv) has failed to follow any requirement of the Code of Conduct laid down in the Third Schedule, the Commission may in the public interest, take action under Rule 8(a) or (b) of the Brokers Rules.

9.6 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.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

10. Account Opening Forms ("Issue No. 2")

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

- List of Transaction fee, commission to be charged by the broker and other CDC charges to be levied should be enclosed with the AOFs.
- Name of nominee should be mentioned on AOFs.

10.2 The findings of the Enquiry Officer revealed that:

- List of Transaction fee, commission to be charged by the broker and other CDC charges to be levied was not enclosed with the AOFs.
- Name of nominee was not mentioned on AOFs.

10.3 The Respondent made the following submission on these issues:

- In respect of the matter of not attaching the list of transaction fee with the AOFs the Respondent stated that trade confirmations/account statements sent to clients contain the amount and rate of transaction fee being charged.
- In respect of the matter of missing names of nominees on AOFs the Respondent asserted that if a client does not want to mention nominee on the AOF the Respondent does not force his client to do so. However, some of the clients have mentioned names of nominees on AOFs.

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

- I have considered the contentions of the Respondent regarding missing list of charges with AOFs and do not agree with the Respondent that giving commission rates on the account statements/trade confirmations suffices the requirement of attaching the list of charges with the AOF. It may be noted that enclosing the list of charges with the AOF makes it part of the AOF which is the basic agreement between the broker and his clients. In case any dispute arises between them all the matters are resolved on the basis of clauses of the AOF. Therefore, by not attaching the said list with the AOF the Respondent has failed to comply with the directives of the Commission.
- With regard to the Respondent's assertion regarding missing names of nominees on the AOFs it may be noted that it is the requirement of the SAOF that name of nominee should be given on AOF. However, if a client does not want to mention name of nominee on the AOF the Respondent should



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

mark the fields as N.A to ensure that the fields could not be amended later on without the consent of the client.

10.5 Considering the above facts and the contentions of the Respondent, it is established that the 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), (iv) and sub rule (v) therefore, where the Commission is of the opinion that a broker has inter alia failed to comply with the 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, take action under Rule 8(a) or (b) of the Brokers Rules.

10.6 In light of the above i.e. the fact the Respondent failed to comply with the 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 this instance 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.

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

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

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

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

11.3 The Respondent made the following submission on this issue:

- The Respondent in its written reply asserted that electronic ledger as maintained today fulfills the requirements of abovementioned Rule.
- During the hearing the Respondent stated that now-a-days due to high volume and speed of trading it is practically impossible to maintain manual order register. However, order register is being maintained for orders placed with KSE brokers.

11.4 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



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

- Rule 4(1) of the 1971 Rules. The aforesaid Logs only records 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.
- 11.5 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.
- 11.6 Considering the above motioned 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.
- 12: As stated above, the Respondent is penalized as follows:
- As regards Issue No1, as stated above, a penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) is imposed.
 - No punitive action is taken in relation to Issue No. 2 and 3 and a simple caution will suffice.
- 12.1 The matter is disposed of in the above manner and the Respondent is directed to deposit the fine with the Commission not later than fifteen (15) days from the receipt of this Order.

Imran Inayat Butt
Director
Securities Market Division