



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
SECURITIES MARKET DIVISION

Before the Executive Director (Securities Market Division)

In the matter of Show Cause Notice issued to

**First Capital Equities Limited**

Under Rule 8 read with Rule 12 of the Brokers and Agents Registration Rules, 2001 (the "Brokers Rules") and Section 28 of the Central Depositories Act, 1997 (the "CDC Act")

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Number and date of Notice	SMD-SOUTH/SCN/99/07 dated August 01, 2007
Date of hearing	August 29, 2007
Present	Mr. Farooq Habib-COO and Mr. M. Tariq-Manager Settlement
Date of Order	November 19, 2007

**ORDER**

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1. This Order shall dispose of the proceedings initiated through Show Cause Notice SMD-SOUTH/SCN/99/07 dated August 01, 2007 ("**Show Cause Notice**") issued to **First Capital Equities Limited** (the "**Respondent**") for violation of Rule 8, Rule 12 and Clause A5 of the code of conduct contained in the Third Schedule to the "Brokers Rules" by the Securities and Exchange Commission of Pakistan (the "**Commission**").
2. Brief facts of the case are that the Respondent is a member of the Karachi Stock Exchange (Guarantee) Limited (the "**Exchange**") 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 ("**1969 Ordinance**") and A. F. Ferguson & Co. ("**the Enquiry Officer**") was appointed as the Enquiry Officer under the above mentioned section inter alia:
  - a) to enquire into the dealings, business or any transaction by the Respondent during the period from April 1, 2006 to June 15, 2006 ("**the Review Period**");
  - b) to identify any and all the acts or omissions constituting the violation of the 1969 Ordinance and the Rules made thereunder; and

c) to identify violations of any other applicable laws, including but not limited to the Brokers Rules and Regulations for Short Selling under Ready Market, 2002 ("**2002 Regulations**") and The Central Depository Company of Pakistan Limited Regulations ("**CDC Regulations**") read with the CDC Act.

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 under cover of a letter dated April 30, 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, the Show Cause Notice was issued to the Respondent under Rule 8 of the Brokers Rules stating that the Respondent has prima facie contravened *inter alia* 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 Act and the rules, regulations issued by the Commission and the stock exchange from time to time as may be applicable to them".

5. The Respondent was called upon to show cause in writing within seven days and appear before the Executive Director (SMD-South) on August 29, 2007 for a hearing, to be attended either in person and/or through an authorized representative.
6. The hearing was held on August 29, 2007 which was attended by Mr. Mr. Farooq Habib-COO and Mr. M. Tariq-Manager Settlement, the Representatives of the Respondent who submitted a written reply and argued the case.
7. A summary of the contentions that were raised by the Respondent in the written submission / during the hearing and the findings / conclusion of the Commission on the same are as follows:





## 8.1 Blank Sales

In terms of Regulation 4 of the 2002 Regulations blank sales are not permissible. The findings of the Enquiry Officer revealed 79 instances of blank sales during the Review Period.

The Respondent made the following submissions on this Issue ("Issue No. 1"):

- The Respondent claimed that majority of these instances were in fact not blank sales and proper evidences were submitted to the Enquiry Officer to verify same.
- The Respondent, upon the direction of the Commission, submitted evidences in support of its claim, perusal of which transpired that 64 out of 79 instances were indeed not blank sales and pre-existing interest existed at the time of the sale. However, no valid justification could be provided in respect of remaining 15 instances.

8.2 Considering the above facts and the contentions of the Respondent, it is established that on 15 occasions blank sales have been made in violation of Regulation 4 of the 2002 Regulations. In terms of Rule 8 of the Brokers Rules, more particularly sub rule (ii), sub rule (iii) and sub rule (iv) thereof, where the Commission is of the opinion that a broker has inter alia failed to comply with any requirements of the Securities & Exchange Commission of Pakistan Act, 1997 or the 1969 Ordinance or of any rules or direction made or given thereunder 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.

8.3 In light of the above i.e. the fact that the Respondent made blank sales, the Respondent has violated the 2002 Regulations thereby attracting sub rule (iii) 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 Brokers Rule. Accordingly, a penalty of Rs.10,000 (Rupees Ten Thousand) is hereby imposed on the Respondent under Rule 8 (b) of the Brokers Rules.



## 9. Missing Account Opening Forms

9.1 In terms of Regulation 74 of the General Rules & Regulations of Karachi Stock Exchange (Guarantee) Limited ("KSE Regulations") it is provided that:

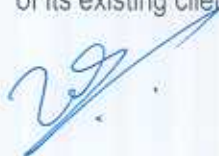
"The Members of the Exchange shall adopt the Standardized Account Opening Form, attached as Form-I to these Regulations, for their new Account Holders with immediate effect and for the existing operating accounts, the same shall be brought into conformity with Standardized Account Opening Form effective from March 31, 2004".

9.2 Findings of the Enquiry Officer revealed that the Account Opening Forms of 50 customers were not available with the Respondent.

9.3 The Respondent made the following submissions on this Issue ("**Issue No. 2**");

- The Respondent submitted 19 out of 50 Account Opening Forms and for the remaining forms contended that these either pertained to inactive clients or to institutional clients which did not extend full cooperation to the Respondent with regards to completion and submission of account opening forms.
- The Respondent also submitted copies of letters issued to institutional clients instructing them to submit duly filled account opening forms along with the supporting documents.

9.4 Considering the fact that non-submission of account opening forms by institutional clients is an industry-wide problem which is faced by all the brokers and the steps taken by the Respondent to compel its institutional clients to submit account opening forms, thereby demonstrating its willingness to comply with the requirements of KSE Regulations, 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 no individual or Institution is admitted as a client unless it submits a duly filled account opening forms with supporting documents and that the Respondent should clearly direct all of its existing clients to submit duly filled account opening forms.





## 10 Book entry Securities of a customer held in the CDC Main account

10.1 The CDC Regulations define Main Account under CDS as:

"An Account maintained on CDR by an Account Holder for transiting of the Book-entry Securities Delivered or entered into such Account to other Accounts or Sub Accounts."

10.2 The findings of the Enquiry Officer revealed that the Respondent admitted vide its letter dated May 10, 2007 that it did not open the CDC sub-account of a customer and deliveries of shares consequent to trading activities of the said customer were routed through the Respondent's Main Account during the Review Period

10.3 The Respondent made the following submission on this Issue ("**Issue No. 3**):

- The Respondent contended that CDC sub account was not opened at that time due to non-availability of registration details. The CDC sub account was opened after obtaining the details. The Respondent pleaded that it has the policy of opening CDC sub account for each and every client.

10.4 Considering the fact that the above mentioned instance was an isolated event and that CDC sub account of the client was opened subsequently, 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 is made of all the rules and regulations in future for avoiding any punitive action under the law.

## 11. CDC Balance statements

11.1 In terms of Regulation 6.2A.1 of the CDC Regulations, it is provided that:

"Every Participant shall send by the 10th day of every month to all Sub- Account Holders maintaining Sub-Accounts under the control of such Participant Holding Balance statements showing the number of every Book-entry Security entered in every such Sub-Account as of the end of the preceding month. Such Holding Balance statements shall be generated from the CDS and shall be sent to the Sub-Account Holders in the manner set out in Regulation 2.6.4."

11.2 Findings of the Enquiry Officer revealed that the Respondent did not have a practice to send the CDC Balance statements to all of its customers by the 10<sup>th</sup> of each month as



required under the CDC Regulations and where the CDC Balance statements were sent, the same were not generated from the CDS, instead the statement was sent on the Respondent's own format.

- 11.3 The Respondent made the following submission on this Issue ("**Issue No. 3**"):
- The Respondent submitted that it had a practice of sending the CDC Balance statements on quarterly basis due to large number of clients. The Respondent submitted that it is developing a system to ensure compliance with this Regulation.
- 11.4 Considering the above mentioned facts and acknowledging the practical difficulties in sending the CDC balance statements to all of the clients of the Respondent, including the dormant accounts, 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 is made of all the rules and regulations in future for avoiding any punitive action under the law.
12. In view of what has been discussed above, I am of the considered view that no punitive action is necessary in relation to Issues No. 2 and 3 and a simple caution will suffice. As regards Issue No. 1, as stated above, a penalty of Rs. 10,000 (Rupees Ten Thousand) is imposed, which should be deposited with the Commission not later than fifteen (15) days from the date of receipt of this Order.



Zafar Abdullah  
Executive Director  
Securities Market Division