



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
(Securities Market Division)

1997

Before The Director (Securities Market Division)

In The Matter Of Show Cause Notice Issued To

Jamshaid And Hasan Securities (Pvt.) Limited

Under Rule 8 read With Rule 12 of The Brokers and Agents Registration Rules, 2001

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Number and Date of Notice	No. MSW/SMD/LSE/1(5)2006/68 dated November 02, 2007
Date of Hearing	November 13, 2007
Present at the Hearing:	Mr. Muhammad Rafiq (Director) Mr. Sultan Wali Khan (Senior Accountant)
Date of Order	January 11, 2008

**ORDER**

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1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. MSW/SMD/LSE/1(5)2006/68 dated November 02, 2007 (**"the SCN"**) issued to Jamshaid And Hasan Securities (Pvt.) Limited (**"the Respondent"**), member of the Lahore Stock Exchange (Guarantee) Ltd (**"the 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 this case are that the Respondent is a member of the 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 A.F. Ferguson & 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 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.
  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 August 24, 2007



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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 & 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 November 02, 2007, the Respondent was called upon to show cause in writing within seven days and appear before the undersigned on November 13, 2007 for a hearing, to be attended either in person and/or through an authorized representative.
6. The hearing was attended by Mr. Muhammad Rafiq, Director and Mr. Sultan Wali Khan, Senior Accountant of the Respondent who argued the case and also submitted written reply to the SCN dated November 12, 2007.
7. A summary of the contentions and objections that were raised by the Respondent in its written submissions and during the hearing and findings and conclusions of the Commission on the same is 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 128 instances of Blank Sales during the Review Period.

- 8.3 The Respondent made the following submissions on the issue:

- Vide its written reply the Respondent stated that only in 5 cases the clients oversold the shares by mistake as at that time it had not installed CTRF facility. However, it is now using the facility to keep a check on Blank Sales. In four cases wrong ULTRA codes were entered in the system while placing the orders. In two cases the clients had prior purchase positions at KSE, however, trade confirmations from KSE broker were not available in its record. In 53 instances the Respondent informed that the





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clients' shares were lying in the Main Account of the house and provided back office shareholding positions of the clients. In 25 instances the clients had shares in their CDC Investor Accounts. In rest of the 39 cases, the clients had positions in CFS which was availed in a single account for which the Respondent provided trading ledger statements of the clients generated through its own system.

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

- The Respondents accepted that in 5 instances clients over sold their shares by mistake and in 4 instances wrong ULTRA code was entered. This shows that the Respondent failed in conduct of its business with due care, skill and diligence. Since the Respondent is responsible for each and every trade executed through its terminal therefore, it was the duty of the Respondent to ensure that all the trades executed by it must be in accordance with the applicable law. Further, with regard to the two instances of Blank Sales where the Respondent claimed that the clients had prior positions in KSE, no documentary evidence of the same was provided. Therefore, in absence of any documentary evidence the said two trades will be considered as Blank Sales.
- Further, in 53 instances of Blank Sale the Respondent asserted that the clients had their deliveries in Main Account of the house. During the hearing, the Respondent was asked to provide documentary evidence that the shares parked in Main Account belonged to the clients. However, the Respondent could not provide the same. Therefore, in absence of any documentary evidence to establish that shares parked in Main Account belong to the clients the same can not be taken as pre-existing interest before sale.
- In case of 25 instances of Blank Sale where the Respondent has claimed that the clients had deliveries in their Investor Accounts no documentary evidence was provided to substantiate the same. The Respondent should have obtained documentary evidence from its clients in case they had deliveries in their Investor Accounts in order to ensure that no Blank Sales are executed on behalf of clients. Just a mere claim by the Respondent can not be taken as evidence that the clients had pre-existing interest before sale of shares.
- With regard to the 39 instances of Blank Sales where the Respondent claimed that the clients had CFS positions. The Respondent was asked to provide any documentary evidence that the clients had prior purchases against which CFS facility was availed. However, the Respondent could not provide any documentary evidence for the same.

8.5 Considering the above facts and the contentions of the Respondent and keeping in view the non-provision of documentary evidence, it is clear that on 128 occasions Blank Sales have been made 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



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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. 50,000 (Rupees Fifty Thousand only) is hereby imposed on the Respondent under Rule 8 (b) of the Brokers Rules.

9. **Group Account ('Issue No. 2')**

9.1 AND WHEREAS, the Commission vide directive No. 1(6) CDC/POL/1997 dated January 6, 2005 prohibited use of Group Account.

9.2 AND WHEREAS, the findings of the Enquiry Officer revealed CDC-sub account of 3 clients were not opened by the Respondent and their shares were taken to main/house account of the house effectively using main/house account as Group Account.

9.3 The Respondent made the following submission on this issue:

- This practice has been ceased during the year 2006 when the exchange prohibited it. Only three CDC sub-accounts could not be opened due to non-availability of necessary documents like CNIC of the clients. These clients' accounts stand closed and are not in operation.
- Further the Respondent asserted that said violation has already been detected by CDC during their inspection and a warning has already been issued.

9.4 I have considered the contentions of the Respondent and it is clear that the Respondent failed to follow the requirements of Commission's directive no. 1(6) CDC/POL/1997 dated January 6, 2005 which prohibited the use of Group Accounts. It was the responsibility of the Respondent to open CDC sub-account of its clients before allowing them to trade from it's house.

9.5 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 Respondent's statement that he has already taken corrective actions and assured 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

10. **Separate Bank Account for Clients Funds ('Issue No. 3')**

10.1 In terms of Commission's directive No. SMD/SE 2(20)/2002 dated March 4, 2005 which states that;

"The exchanges are to ensure that brokers follow the practice of segregating clients' assets from the broker's assets in order to ensure that clients' assets are not misused.





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For this purpose brokers should have one separate bank account which includes all the cash deposits of their clients along-with records/breakdown of client positions."

- 10.2 The findings of the Enquiry Officer revealed that the Respondent was not maintaining separate bank account for clients' funds.
- 10.3 The Respondent made the following submission on this issue:
- The Respondent stated that it was a misunderstanding on its part that a separate bank account has to be maintained for each client which is practically impossible. However, after the violation was pointed out by Enquiry Officer and some clarification sought from LSE it has now started to maintain separate bank account for clients' funds.
  - The Respondent further stated that the same violation has already been pointed out during the System Audit and it has already paid a penalty to LSE.
- 10.4 I have considered the contentions of the Respondent and it is clear that the Respondent failed to understand the Commission directive no. SMD/SE 2(20)/2002 dated March 4, 2005. The said directive requires the members to maintain one separate bank account in which only clients' funds are placed in order to stop the member from using clients' funds for its own purposes.
- 10.5 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 it has already taken corrective action and LSE had already penalized the Respondent for the same violation I 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 rules, regulations and directives of the Commission in the future for avoiding any punitive action under the law.
- 11 As stated above, the Respondent is penalized as follows:
- a) As regards Issue No1, as stated above, a penalty of Rs. 50,000/- (Rupees fifty 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.

  
**Imren Inayat Butt**  
Director (SM)  
Securities Market Division