



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)**

Before the Director (Securities Market Division)

**In the matter of Show Cause Notice dated August 23, 2005
issued to Atlas Investment Bank Limited**

Date of Hearing

September 05, 2005

Present at the Hearing:

Representing Atlas Investment Bank Limited:

Mr. M. Naeem Khan - Managing Director

Assisting the Director (SM):

Mr. Ahmad Zafeer - Deputy Director

ORDER

1. The present matter arises out of a Show Cause Notice ("Notice") bearing No. SMD/SCN/1/2005/003 dated August 23, 2005 issued by the Securities and Exchange Commission of Pakistan ("the Commission") to Atlas Investment Bank Limited ("the Respondent").
2. Brief facts of this case are that between March 03, 2005 and March 29, 2005, the Respondent carried out 34 trades in the shares of National Bank of Pakistan ("NBP"), Oil & Gas Development Company Limited ("OGDC"), Pakistan Oilfields Limited ("POL"), Pakistan Petroleum Limited ("PPL") and Pakistan Telecommunication Company Limited ("PTCL") through the Karachi Automated Trading System ("KATS") of the Karachi Stock Exchange (Guarantee) Limited on behalf of three clients of the Respondent.
3. Each of these trades prima facie cancelled each other out and there was no change in the beneficial ownership of the shares. It appeared that in the course of these trades the

Respondent purchased and sold, on behalf of the same clients, 401,100 shares of NBP, 1,472,800 shares of OGDC, 75,000 shares of POL, 106,000 shares of PPL, and 500,000 shares of PTCL.

4. Such practice is likely to interfere with the fair and smooth functioning of the market by creating a false and misleading appearance of trading activity in the scrips mentioned herein above and is further likely to be detrimental to the interests of the investors.

5. In order to assess the situation the Commission obtained the following KATS data from the Karachi Stock Exchange for the relevant period, which revealed that during the month of March, 2005 the Respondent executed the following trades which prima facie cancelled each other and did not result in a change in beneficial ownership:

Date	Client Code	Name of Share	No. of Shares	Purchase & Sale Rate	Time of Execution
09/03/05	201	NBP-REG	1,100	149.55	1000240052
24/03/05	154	NBP-REG	200,000	124.65	1131240001
29/03/05	154	NBP-REG	100,000	106.95	1056180007
29/03/05	154	NBP-REG	100,000	106.95	1056410011
		Sub-Total	401,100		
08/03/05	201	OGDC-REG	24,000	147.05	1332310004
16/03/05	003	OGDC-REG	100,000	195.50	1028530107
24/03/05	154	OGDC-REG	100	144.05	1127250001
24/03/05	154	OGDC-REG	49,500	144.05	1128050017
24/03/05	154	OGDC-REG	100,000	144.05	1128220001
24/03/05	154	OGDC-REG	100,000	144.05	1129000008
24/03/05	154	OGDC-REG	100,000	144.05	1129340004
24/03/05	154	OGDC-REG	100,000	144.05	1130130010
25/03/05	154	OGDC-REG	49,600	136.85	1544470001
25/03/05	154	OGDC-REG	100,000	136.85	1545170002
25/03/05	154	OGDC-REG	100,000	136.85	1545300004
25/03/05	154	OGDC-REG	100,000	136.85	1545450007
25/03/05	154	OGDC-REG	100,000	136.85	1546150001
29/03/05	154	OGDC-REG	49,600	123.55	1057200005
29/03/05	154	OGDC-REG	100,000	123.55	1057340007
29/03/05	154	OGDC-REG	100,000	123.55	1057490001
29/03/05	154	OGDC-REG	100,000	123.55	1058050004
29/03/05	154	OGDC-REG	100,000	123.55	1058340001
		Sub-Total	1,472,800		
29/03/05	154	POL-REG	25,000	228.75	1055240007
29/03/05	154	POL-REG	50,000	228.75	1055410007
		Sub-Total	75,000		
03/03/05	201	PPL-REG	6,000	251.00	1114040039
29/03/05	154	PPL-REG	10,000	205.15	1054190007
29/03/05	154	PPL-REG	40,000	205.15	1054370001

29/03/05	154	PPL-REG	50,000	205.15	1054500007
		Sub-Total	106,000		
29/03/05	154	PTC-REG	10,000	61.75	1047450013
29/03/05	154	PTC-REG	90,000	61.75	1048190009
29/03/05	154	PTC-REG	100,000	61.75	1048340004
29/03/05	154	PTC-REG	100,000	61.75	1048510010
29/03/05	154	PTC-REG	100,000	61.75	1049030001
29/03/05	154	PTC-REG	100,000	61.75	1049370001
		Sub-Total	500,000		

6. In view of the above findings the Commission issued a Notice to the Respondent dated August 23, 2005, detailing the aforesaid facts and asking it to show cause as to why action should not be taken against it in pursuance of Rules 8(a) and 8(b) of the Brokers and Agents Registration Rules, 2001 (“the Rules”). A copy of the aforesaid KATS data was annexed to the Notice in order to provide to the Respondent an opportunity for answering the allegations made therein. The Respondent was asked to submit a written reply along with the documentary proof within seven days of the Notice and the hearing was fixed in Islamabad for September 05, 2005.
7. By way of explanation the Respondent submitted a written reply dated August 29, 2005 along with comparison of its trade with total turnover at KSE for the relevant dates. It further submitted an additional reply dated September 02, 2005 to counter the allegations made against it in the Notice. The Respondent in its letters denied the allegations of violation of the Rules in relation to the transactions between March 03, 2005 and March 29, 2005 covering 34 trades, stating the following reasons:
- a. The contents whereof are misconceived and denied. It is evident that the allegations leveled therein against us are devoid of legitimate basis and do not warrant issuance of any Show Cause Notice. However, a detailed reply to the alleged allegations in the Show Cause Notice is submitted in order to substantiate absence of malafide intentions or desire to manipulate market for personal gains.
 - b. The unusual events during the first quarter of the year 2005 and more particularly in the second half of March essentially demanded damage control approach in order to minimize loss of capital. The strategic policy of Minimization of Capital Loss was effectively followed but despite all the efforts we suffered losses. It is submitted that forthwith selling of bulk of securities as referred on the dates mentioned in your

Show Cause Notice was influenced by the potential market crises. Accordingly, all transactions pointed out in the alleged Show Cause Notice during the period from March 24, 2005 to March 29, 2005 under A/c No. 154, which is the Proprietary Trading Account of Atlas Investment Bank Ltd. were solely for the purpose of realizing incurred capital losses on the propriety investment portfolio. This should in no way be construed as manipulative or caused to interfere with the fair and smooth functioning of the market being detrimental to the investor's interest, as strongly alleged.

- c. The transactions reported during March 03, 2005 to March 09, 2005 under A/c No. 201 pertain to the Proprietary Ready-Future Arbitrage Account of Atlas Investment Bank Ltd. These transactions besides being extremely negligible in comparison with overall scrip volumes traded on the respective dates were nevertheless done solely for the purpose of balancing arbitrage traded volumes in the ready and future markets. In the wake of the losses only, the allegations in the alleged Show Cause Notice dated 23.08.2005 are deprived of any standing whatsoever. A bare perusal of the alleged Show Cause Notice would make it clear and obvious that influencing the market in terms of volume and share prices for personal gains by us was the primary allegation in the said Show Cause Notice.
- d. The transaction on March 16, 2005 under A/c No. 003 was on behalf of a client intending to book capital gain without a change in the holding. The volume transacted again is quite negligible when compared to the overall volumes traded in that particular scrip on the said date.
- e. It is categorically denied that the trading activities conducted by or through us have interfered with the fair and smooth functioning of the market and injured the interests of the Investors or violated statutory regulations. Even otherwise a glance at the volume of the trading transactions conducted by us during March Crises reflects negligible portion of the entire volume of the transactions conducted at KSE during the same period. The trading transactions conducted by us by no stretch of imagination have the capability to influence the volume of the shares or their prices in the stock market.

- f. The Commission is required to form an objective opinion into the alleged violation of the said provisions before initiating any action, there under, which objective opinion can only be formed after conducting examination into the alleged violation of the provisions of Brokers and Agents Registration Rules, 2001. It is evident that neither any such examination has been conducted nor intimated to us or referred in the alleged Show Cause Notice dated 23.08.2005, which itself violates the command of the provisions of Securities and Exchange Ordinance, 1969 and Securities and Exchange Commission of Pakistan Act 1997.
- g. It is reiterated that no alleged violation of the Code of Conduct of Brokers has been committed by us during the course of legitimate and otherwise rational trading transactions. It is worth-mentioning that no complaint whatsoever has been lodged or referred to by the Karachi Stock Exchange which provided playing ground for the trading activities, against us. No manipulative, fraudulent or deceptive transactions were conducted with a view to distort market equilibrium or making personal gains, which personal gains and market distortion are conspicuous by their absence in the instant case hence the alleged Show Cause Notice is without any basis and liable to be withdrawn.
- h. We categorically deny that the transactions referred to in the said Show Cause Notice dated August 23, 2005 were conducted or undertaken in order to create false and misleading appearance of trading activity in the shares and to influence the market in terms of volume and share prices.
- i. Circuit Breakers mechanism though devised to prevent manipulation of prices in usual circumstances but in fact played havoc with the investors, who were not allowed exit, resulting into heavy selling pressures. In these unusual circumstances, where there was at all no trading activity in the market, the transactions were logical and primarily aimed at minimizing our already huge losses.
- j. It is further added that in the absence of any actual and real trading activity in the market, few in-frequent trading transactions cannot be termed as manipulative and creating false and misleading trading appearance in order to influence the market to the disadvantage or advantage of any.

8. The hearing was fixed for September 05, 2005. On the date of the hearing, Mr. M. Naeem Khan, Managing Director, of the Respondent appeared before me. The main points raised by the Respondent in its oral submission were as follows:

(a) Three transactions in Proprietary Ready-Future Arbitrage Account (201) of the Respondent were made to balance arbitrage traded volumes in the Ready Market and Futures Market.

(b) Thirty transactions in the Proprietary Trading Account (154) of the Respondent were executed for 400,000 shares of NBP, 1,348,800 shares of OGDC, 75,000 shares of POL, 100,000 shares of PPL and 500,000 shares of PTCL in order to realize losses on the investment portfolio. In view of the management policy of Minimization of Capital loss, it was decided to realize the losses on the proprietary investment portfolio by sale of investment and take the net amount in Profit and Loss Account for the quarter ending March 31, 2005 instead of Marked-to-Market the investment portfolio and show the resulting amount in Revaluation of Investments at equity side of the Balance Sheet for the period. In order to realize the losses on sale of investments, the sale transactions have to be executed through Karachi Automated Trading System to make it a legitimate and realized sale for accounting purpose. In these unusual circumstances, where there was no real and actual trading activity in the market and all the major scrips were on lower circuit breakers, the Respondent was constrained to conduct the transactions to minimize the already huge losses.

(c) One transaction was conducted on behalf of Muslim Insurance Company Limited, a Respondent's client having Account No. 003. The Respondent allowed the said client to realize its losses, similar to its proprietary position, by executing sale - purchase for the same client through KATS without change in beneficial ownership.

9. Having heard the views and contentions of the Respondent in its written and oral submissions and after carefully examining the facts submitted by the Respondent in both its written responses, I found that the following issues arise out of this matter:

(a) *Does the Respondent act in violations of the Rules? If so, up to what extent?*

(b) *What should the order be?*

Each of these issues has been examined herein below:

(a) *Does the Respondent act in violation of the Rules? If so, up to what extent?*

10. The Respondent admitted in its written statement dated August 29, 2005 that it carried out all 34 trades annexed to the Notice. The Respondent accepted that there has been no change in the beneficial ownership of the shares, but defended its position that the same was done without malafide intentions.
11. The Respondent's assertion that the transactions reported under A/c No. 201 were done solely for the purpose of balancing arbitrage traded volumes in the Ready and Futures Market is not acceptable. Cancellation of pending/unexecuted buy/sell orders in the Ready and Futures Market and put contra entry in the KATS in opposite direction is not appropriate. This is clearly tantamount to negligence on part of the Respondent as it is a violation of the brokers' code of conduct under which a broker is required to have in place adequate arrangement for proper conduct of its business. Engaging in and allowing trading activity in the market merely for the purpose of canceling an order previously entered in the KATS creates a false impression of trading activity in that particular scrip and is contrary to high standards of integrity expected of a broker.
12. The Respondent's plea that the transactions reported under A/c No. 154 were done solely for the purpose of realizing incurred capital losses on the propriety investment portfolio does not hold merit because the aforesaid trades had the effect of canceling each other out and did not result in any change in the beneficial ownership of these shares. Such trading activity undermines market integrity by creating an impression of shares being traded in the market when in fact the trades have been cancelled out by the same person. The interest of the investors are compromised due to the fact they receive a false impression of trading in the market which is more than likely to influence the decision of any reasonable investor to invest or trade in the market. This can be well established from the fact that some of the

transactions by the Respondent has major impact on the total market turnover in particular scrip on a particular day as mentioned by the Respondent itself:

Date	Name of Scrip	Respondent Transaction Volume	Total Market Turnover	Respondent Volume as % of Total Market Turnover
24/03/05	NBP	200,000	910,600	21.96%
24/03/05	OGDC	449,600	748,300	60.08%
25/03/05	OGDC	449,600	1,263,000	35.60%
29/03/05	OGDC	449,600	667,000	67.41%
29/03/05	NBP	200,000	35,134,600	0.57%
29/03/05	POL	75,000	12,369,800	0.61%
29/03/05	PPL	100,000	13,089,900	0.76%
29/03/05	PTC	500,000	81,324,500	0.61%

13. The Respondent has also inferred that primary allegation in the Show Cause Notice was influencing the market in terms of volume and share prices for personal gains by the Respondent. Reaching such a conclusion is incorrect and baseless as the third paragraph in the Show Cause Notice clearly stated that the transactions mentioned in Annexure A of the Notice created false and misleading appearance of trading activity in the shares. It does not allege or discuss the personal gains of the Respondent. In my view there is no doubt about the fact that these transactions have actually created artificial and misleading appearance of trading activity in the shares. Such trading activities give false quotations in the market which may persuade the public in doing business in particular securities. The Respondent is not expected to create false market or indulge in any act which is detrimental to investor's interest or which leads to interference with smooth and fair functioning of the market.
14. The Respondent not only executed the aforesaid trades for its portfolio account but also carried out such trade for its client and associated company, Muslim Insurance Company Limited who intended to book capital gain without change in the holding.
15. Further, the Respondent in its written reply has admitted that there was at all no trading activity in the market and the transactions were logical and primarily aimed at minimizing

already huge losses. Keeping in view the fact that no real market existed at the time, the transactions undertaken by the Respondent to realize losses are not legitimate transactions. The Respondent has not presented the true picture of its financials to its shareholders by effecting these transactions. The Respondent was expected to keep itself away from such transactions which interfere with the fairness of the market.

16. The Respondent plea that the transactions were carried out due to policy of minimization of capital loss is not acceptable as the procedure adopted to follow the policy was in violation of the Rules. Circuit breakers are risk management tools and Stock Exchange has devised scrip wise upward and downward circuit breaker limits in order to control the extreme price fluctuation in the market. No market participant is allowed to make absence of trading activity in the market due to circuit breakers as a justification for engaging in transactions in contravention of the Rules. As a prudent broker, it was the obligation of the Respondent to ensure fair, efficient and transparent market.
17. I am of the view that the Respondent has failed to act with due skill, care and diligence in the conduct of its business. Further, the Respondent has failed to maintain high level of integrity, promptitude and fairness in the conduct of its business and has in fact indulged in dishonorable, disgraceful and improper conduct on the stock exchange. The Respondent did not comply with the statutory requirements according to the code of conduct of the Rules. Therefore, the Respondent acted in violation of Rule 8(iv), read with Rule 12 of the Rules.

(b) What should the order be?

18. The Commission takes a serious note of the violation of the Rules and is entitled to suspend the Respondent's license. In the present circumstances, however, the Commission has decided not to exercise this power. Therefore, in exercise of the powers under Rule 8(b) of the Rules, I hereby impose on the Respondent, the penalty of Rs. 100,000.00 (Rupees One hundred thousand only) which should be deposited with the Commission, no later than thirty (30) days from the date of this Order.
19. Additionally, I hereby direct the Respondent to abstain from buying and selling of shares in a manner that the trades do not result in a change in beneficial ownership of the shares failing which the Commission will proceed against it according to law.

20. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

(Imran Inayat Butt)
(Director SM)

Date of Order: 21st September 2005