



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Say no to corruption

Before
Shahzad Afzal Khan-Director/Head of Department
Adjudication Department-I

In the matter of
Hascol Petroleum Limited

Number and date of notice: No. CSD/ARN/544/2015-291 dated August 26, 2022

Dates of hearings: November 30, 2022, January 18, 2023, February 8, 2023,
March 6, 2023, March 7, 2023

Present: Mr. Shahan Karimi and Mr. Jahanzeb Awan of Haidermota & Co., Mr. Saleem Chamdia, Mr. Mumtaz H. Khan, Mr. Liaquat Ali, Mr. Aqeel A. Khan, Mr. Nauman K. Dar, Mr. Waheed A. Shaikh, Mr. Farooq Rahmtullah Khan, Mr. Najmus Saquib Hameed and Mr. Mr. Farhan Ahmad Company Secretary

Order

Under Section 199 of the Companies Act, 2017 and Section 479 thereof read with the Companies (Investment in Associated Companies) Regulations, 2017

This order shall dispose of the proceedings initiated through Show Cause Notice (SCN) bearing reference number No./CSD/ARN/554/2015-291 dated August 26, 2022 issued under Section 199 of the Companies Act, 2017 (**the Act**) and Section 479 thereof read with the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017 (**the Regulations**) against Hascol Petroleum Limited (**the Company**) and its following directors, collectively referred to as the **Respondents**:

- (i) Hascol Petroleum Limited through the Chief Executive;
- (ii) Mr. Mumtaz Hasan Khan;
- (iii) Mr. Saleem Butt;
- (iv) Mr. Paul Anthony Himsworth;
- (v) Mr. Farooq Rahmtullah Khan;
- (vi) Mr. Najmus Saquib Hameed;
- (vii) Mr. Liaquat Ali;
- (viii) Mr. Farid Arshad Masood;
- (ix) Mr. Abdul Aziz Khalid;
- (x) Mr. Aqeel Ahmed Khan;
- (xi) Mr. Nauman Karamat Dar;
- (xii) Mr. Alan Duncan;
- (xiii) Mr. Atif Aslam Bajwa; and
- (xiv) Mr. Waheed Ahmad Shaikh.



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2. Brief facts of the case are that the examination of annual audited accounts of the Company for the year ended December 31, 2019 (**Accounts 2019**), *inter alia*, transpired investments as advance against purchase of shares in case of following companies (Note 8 to the Accounts 2019):

8. Long term investments - Advance against purchase of shares- with related parties:

S. No.	Company	% Holding	Rs. in '000'	
			2019	2018
1	Hascol Lubricants (Pvt) Limited	100%	2,948,362	3,362
2	Hascol Terminals Limited	15%	40,000	40,000
3	VAS LNG (Private) Limited	30%	1,023	1,023

Moreover, note 8.5 to the Accounts 2019, *inter alia*, disclosed that: "This includes advance against equity in wholly owned subsidiary of the Company, incorporated in Pakistan under the repealed Companies Ordinance, 1984. Its shares are not quoted in active market. The Company holds 294.5 million ordinary shares (2018: Nil) of Rs. 10 per share."

3. Furthermore, in pursuance of investigation order dated July 8, 2021 and supplementary investigation order dated August 27, 2021 under Section 257 of the Act to conduct investigation into all aspects of the Company and after scrutiny of all the records and books of accounts, books and papers, Inspectors have submitted the Investigation Report dated January 12, 2022 (**the Investigation Report**). In view of the aforesaid, it has been *inter alia*, revealed from the records maintained at the Commission that:

Investments in Hascol Lubricants (Private) Limited:

- (i) The aforesaid examinations and Investigation Report, *inter alia*, highlighted that the Company had given advance for issue of shares of Rs. 3,087 million during year 2019 (2018: Rs. 3.3 million and 2017: Rs. 2 million) to Hascol Lubricants (Private) Limited (**HLPL**).
- (ii) Note 41 to the Accounts 2019, *inter alia*, disclosed that: "41: Loss from discontinued operations: The Board of Directors of the Company in their meeting held on August 29, 2019 has approved the transfer of its lubricant business operations to its wholly owned subsidiary company, Hascol Lubricants (Private) Limited with effect from October 21, 2019. These operations are now part of the subsidiary and are taken as disposed in these unconsolidated financial statements."
- (iii) The concerned department of the Securities and Exchange Commission of Pakistan (**the Commission**) through letter dated July 2, 2018 sought an explanation about investments made in year 2017 and evidence of compliance in terms of Section 199 of the Act. The Company through its reply dated May 28, 2019, *inter alia*, submitted that: "The requirements of Section 199 of the Company's Act 2017 with respect to investments in Hascol Lubricants (Pvt) Ltd are not applicable as it is wholly owned subsidiary of Hascol Petroleum Limited."



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- (iv) The concerned department of the Commission again vide its letter dated May 13, 2022, *inter alia*, sought an evidence of compliance for its investments made in HLPL. The Company through its reply dated June 17, 2022, *inter alia*, stated that: "The HPL group consists of Hascol Petroleum Limited (a holding company) and Hascol Lubricants is a wholly owned subsidiary company of HPL, which was incorporated on 31st January 2017. The primary object of Hascol Lubricants is to carry on the business of blending and producing of lubricating oils, greases and other petroleum products. Therefore, the requirements of Section 199 are not applicable on this transaction given that Section 199 relates to investments in associated companies, whereas HLPL is a wholly owned subsidiary company of HPL. SRO 1239(I)/2017 of the SECP explicitly provides for an exemption to Section 199 of the Companies Act, 2017 for investments in wholly owned subsidiaries."
- (v) The record shows that HLPL became wholly owned subsidiary with effect from July 01, 2019.
- (vi) As per accounts of the Company for the period ended September 30, 2019 the balance of advance against purchase of shares was Rs. 3.3 million. The announcement of offer was made on October 7, 2019 and the Company made payment against purchase of shares of Rs. 3.3 million before the date of announcement.
- (vii) HLPL issued shares on March 05, 2020 against the announcement of offer dated October 07, 2019, which is beyond the threshold of ninety days as prescribed in regulation 5(3) of the Regulations.
- (viii) Regulation 5(3) of the Regulations requires that if shares are not issued within ninety days or within the time prescribed by the relevant legal and regulatory framework, whichever is later, such share deposit money shall be treated as loan, which shall be subject to interest, mark up or return from the date of transfer of funds in accordance with the provisions of Section 199 of the Act.
- (ix) In view of the aforesaid, the Company, *prima facie*, violated the following:
- (a) the provisions of Section 199(1) of the Act; as investments of Rs. 3.3 million (2018: Rs 3.3 million and 2017: Rs. 2 million) in associated company i.e. HLPL was made without the approval of the members;
- (b) Section 199(2) of the Act by not charging any interest on Rs 3.3 million up to October 07, 2019 i.e. date of announcement of offer, as regulation 5(3) of the Regulations requires that share deposit money shall only be transferred for equity investments after the announcement of offer for issue of share by associated company;
- (c) the provisions of regulation 5(3) of the Regulations by not treating the advance of Rs. 2,948 million against shares as loan in term of Section 199 of the Act.

Investments in Hascol Terminals Limited:

- (i) In case of Karachi Hydrocarbon Terminal Limited (formerly Hascol Terminals Limited) (HTL) "advance for issue of shares" was Rs. 40 million as of 2019 (2018: Rs. 40 million and 2017: Rs. 57.685 million).



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- (ii) Relevant record shows that Mr. Saleem Butt and Mr. Mumtaz Hassan Khan are the common directors, hence, HTL is associated company.
- (iii) As per relevant details HTL made following announcement of offers for issue of shares:
- (a) the announcement of offer issued on June 29, 2017 relating to right issue of 148 million shares.
- (b) the announcement of offer issued on August 24, 2017 relating to right issue of 89.99 million shares.
- (c) the notice of offer issued on February 17, 2019 relating to right issue of 25 million shares.
- (iv) The Company made following advances to HTL against issue of shares:

Rupees in thousands

Particulars	Period						
	December 31, 2016	June 30, 2017	September 30, 2017	December 31, 2017	December 31, 2018	December 31, 2019	June 30, 2020
Opening Balance	Nil	208,808	401,908	236,910	57,685	40,000	40,000
Closing balance	208,808	401,908	236,910	57,685	40,000	40,000	2,500

- (v) Per copies of Form-3, information relating to transfer of shares against advance payment is summarized below:

Date of Form-3	Date of transfer	Details of shares transferred to the account of the Company
October 26, 2017	September 15, 2017	Total 148 million shares allotted including 16.50 million shares allotted to the Company
January 29, 2018	December 7, 2017	Total 89.99 million shares allotted including 13.50 million shares allotted to the Company
June 18, 2020	April 28, 2020	Total 25 million shares allotted including 3.75 million shares allotted to the Company

- (vi) The Company has sought approval of Rs.375 million in the EOGM held on June 29, 2016. Furthermore, the Company in its AGM held on April 28, 2017, granted approval to make investment of Rs.125 million equity investment in HTL. Thus, the Company has total approval of Rs.500 million for making equity investment in HTL.
- (vii) In respect of 148 million shares issued on September 15, 2017 by HTL, the date of announcement of offer is June 29, 2017 and the books of accounts of the Company showing a balance of advance against issue of shares of Rs.208.808 million as on December 31, 2016. This indicates that advance payment of Rs. 208.808 million was made before the date of offer.
- (viii) HTL's date of announcement of offer was August 24, 2017 in respect of 89.999 million shares allotted on December 07, 2017 and the books of accounts of the Company showing balance of advance against issue of shares of Rs.401.908 million as on June 30, 2017. This



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- indicates that increase in advance payment of Rs.193.1 million (Rs.401.908 million minus Rs.208.808 million) was made before the date of announcement of offer.
- (ix) In the matter of 25 million shares issued on April 28, 2020 by HTL, the date of offer is February 17, 2019 and the books of accounts of the Company showing a balance of Rs.40 million as on December 31, 2018.
- (x) In view of the above, the Company has, *prima facie*, violated:
- (a) the provision of regulation 5(3) of the Regulations for the aforesaid investments in HTL, which requires that share deposit money shall be transferred for equity investment only after announcement of the offer for issue of shares and the Company *prima facie* failed to charge any interest on aforesaid amount of advance against purchase of shares in aforesaid investments in term of Section 199(2) of the Act.
- (b) the provisions of regulation 4(2) of the Regulations for not making disclosures in subsequent notices of general meeting(s) about non-implementation of decision of investments to be made in HTL in the afore referred general meetings.

Investments in VAS LNG (Pvt) Limited:

- (i) In case of VAS LNG (Pvt) Limited (VAS), associated company; an amount of Rs. 1.023 million has been reflected as advance against issue of shares since 2017 while no shares have been issued against such advance till the year 2020. The advance has been fully provided for as disclosed in note 9.3.1 of the Accounts 2020 as VAS filed liquidation in October 2020 and the Company is not expecting any recovery of its investment.
- (ii) It was noted that the approval of shareholders in the general meeting was obtained in the AGM held on April 28, 2017 for an equity investment of Rs.300 million in VAS. The approval has not been renewed subsequently, therefore in terms of regulation 6 of the Regulations, the said approval stands lapsed after twelve months. Moreover, the investment of Rs.1 million made by the Company is in terms of advance and not an equity Investment and is, therefore, made, *prima facie*, in contravention of Section 199(1) of the Act.
4. Keeping in view of the violations as stated above, the proceedings were initiated against the Respondents through the SCN requiring to show cause in writing within fourteen (14) days, as to why penalty, as provided, may not be imposed for the aforesaid violations of Section 199 of the Act and of the Regulations.
5. In this regard, it may be noted that in response to the SCN;
- (a) Mr. Farooq Rahmtullah Khan, instead to submit a reply, forwarded a copy of letter dated September 1, 2022 addressed to the Company seeking relevant underlying details in the matter of the proceedings u/s 199 of the Act initiated through SCN dated August 26, 2022.



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- (b) Mr. Saleem Butt, instead to submit a reply, forwarded a copy of letter dated September 7, 2022 addressed to the Company seeking relevant details in the matter of SCN. Mr. Butt through letter dated September 16, 2022 submitted that he needed information from the Company to make a response, however, the said information was not received by him.
- (c) Mr. Waheed A. Shaikh through letter dated September 1, 2022, *inter alia*, submitted that he was employed as Chief Executive of the Company from 4th March 2020 till 1st April 2020 i.e. for 26 days and none of the transactions mentioned in the SCN were carried during his tenure of the directorship.
6. The Company Secretary through reply dated September 26, 2022, *inter alia*, submitted that:

Hascol Petroleum Limited ("HPL") being one of the respondents is in receipt of your Show Cause Notice bearing Ref No. CSD/ARN/554/2015-291 dated 26 August 2022 under Section 199 and Section 479 of the Companies Act, 2017 read with the Companies (Investment in Associated Companies) Regulations, 2017 (the "SCN").

As a preliminary stance, it is submitted that that the averments and allegations HPL in terms of the SCN are denied, being incorrect and contrary to the factual and legal position pertaining the matter. The Securities and Exchange Commission of Pakistan ("SECP") has failed to appreciate that the subject matter dates to the financial statements of the company in 2017, after which significant time has passed, the management of HPL has drastically changed, and of which records are not easily available. Hence, the averments contained in the SCN are defeated by the doctrine of laches. Moreover, the SCN is based on a complete misinterpretation and incorrect application of facts and law, and accordingly is liable to be withdrawn.

- 1. It is pertinent to note that in the Investigation Report dated 12 January 2022 ("Investigation Report"), the SECP concluded that a further forensic investigation was required under Section 258 of the Companies Act. Hence, it is evident that the SECP based on their investigation under Section 257 of the Companies Act did not find any incriminating material to substantiate their allegations against HPL, it is entirely counterintuitive and illogical that on the one hand SECP conclude that further probe is required, but at the same time issues the SCN alleging that they had evidence of breaches of law. This position is entirely unsustainable.*
- 2. Furthermore, on note 19 January 2022 the SECP passed an order under Section 258(1) of the Act ("Commissioner Order"), appointing Parker Russell-AJS Chartered accountants, as forensic investigators. HPL appealed ("Initial Appeal") this unilateral decision (Commissioner Order) the Appellate Bench of the SECP ("Appellate Bench"), who disposed of the matter vide order dated 12 April 2022 ("AB Order") claiming that the Initial Appeal was not maintainable. HPL then filed Misc. Appeal No. 32 of 2022, ("HC Appeal") before the Hon'ble High Court of Sindh at Karachi ("Court") and the Hon'ble Court vide order dated 27 April 2022 was pleased to suspend both the Commissioner Order and AB Order. Hence, the Hon'ble Court has restrained SECP from their pursuit of the roving investigation under Section 258 of the Companies Act.*
- 3. Given the fact that SECP cannot pursue a further investigation suggested and highlighted in the Investigation Report, SECP is now attempting to issue Show Cause Notices such as the SCN under reply. The SCN is not maintainable under law as it has admittedly been issued on the basis of the*



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Investigation Report which itself states that further investigation is required. Hence, as the SECP itself admits that it does not have the requisite material upon which to prosecute HPL, SCN is liable to be withdrawn.

4. *It may also be noted that the matter of investments in associated companies with respect HLPL, Hascol Terminals Limited ("HTL") and VAS LNG (Private) Limited was never highlighted or mentioned in the investigation order dated 08 July 2021 and supplementary investigation order dated 27 August 2021 under section 257 of the Companies Act, 2017, but only reported in Investigation Report dated 12 January 2022.*
5. *The Commission vide the above SCN has inquired about the investments made by HPL as advance against purchase of shares, in case of three companies:*
 1. *Hascol Lubricants (Private) Limited*
 2. *Hascol Terminals Limited*
 3. *VAS LNG (Private) Limited*

6. *Hascol Lubricants (Pot) Limited*

We would like to highlight and reiterate that HLPL was incorporated on 31 January 2017 as a private limited company under the Companies Ordinance, 1984. Since inception till date, it was intended to be formed as a wholly owned subsidiary company of HPL (holding company) as evident from the material information dated 17 February 2017 disclosed at PSX by HPL regarding formation of HLPL. With respect to para-4 of the SCN, it may please be noted that the Commission had already investigated the matter of transfer of assets to HLPL and loss from discontinued operations vide its Show Cause Notice dated 18 April 2022 issued under Section 159 of the Securities Act, 2015. HPL had already in detail replied the show cause notice dated 18 April 2022 and the Commission Vide its Order dated 13 July 2022 issued by Director/HOD (Adjudication Department-I) concluded the proceedings initiated without imposing any monetary penalty and any other adverse order. It seems that SECP is attempting at punishing HPL for a past transaction that dates several years back which has already been investigated and proceedings concluded.

Secondly, the matter of transactions with HTL and HLPL has also been previously communicated to SECP vide Commission's letter dated 13 May 2022 which was duly responded vide HPL's reply dated 17 June 2022 (copy attached as Annexure A). HPL hereby reiterates its stance that HLPL is a wholly owned subsidiary company. HPL and under SRO 1239/(1)/2017 of the SECP, it explicitly provides for an exemption to Section 199 of the Companies Act, 2017 for investments in wholly owned subsidiaries.

As documentary evidence, we attach herewith the extract from the Balance Sheet as at 30 June 2017 from the financial statements of HLPL showing advance against issue of shares (Note 6) of Rs. 2,012,900. The note 6 is reproduced below (copy attached as Annexure B):

"ADVANCE AGAINST ISSUE OF SHARES

This relates to advance received from Hascol Petroleum Limited (the Holding company) against which paid-up share capital of equivalent nominal amount will subsequently be allotted to the Holding company."



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The above extract from the financials reveal the same facts as disclosed by HPL and nothing has been concealed from the shareholders. It is also evident here that HLPL is subsidiary and HPL is the holding company as reported in their accounts as well.

7. Hascol Terminals Limited:

As mentioned in point (6) above, we reiterate our stance and reply mentioned in our reply attached as Annexure A, as the matter had already been investigated in respect of investment in HTL. To reiterate, we would like to quote the approvals taken from the shareholders' of HPL in its AGM held on 28 April 2017, regarding the investment in HTL:

Quote:

Additional equity investment by the Company in its associated company, Hascol Terminals Limited - Mr. Liaquat Ali, director briefed the shareholders that the Company will own 15% of the issued shares of Hascol Terminals Limited, which was initially set up as a subsidiary of the Company to eventually operate as a joint venture company along with company sponsors /investors. The Company currently has an approval of equity investment of PKR 375 million. He briefed that the Company has entered into a joint venture / shareholders' agreement dated 3rd January 2017 to jointly own and operate the Company in the following proportion i.e (a) VTTI 51% (b) Hascol Petroleum Limited 15% (c) Fossil Energy (Private) Limited 24%, and (d) ST Logistics (Private) Limited 10%, with proportionate representation of the Board of Directors and expected standard rights of first refusal and tag along rights usual for such type of joint venture companies. He briefed the shareholders that due to increase in steel prices the project cost of Hascol Terminals Limited has over run and additional cost has to be incurred for the construction of tanks and piping. The shareholders of Hascol Terminals Limited have agreed to fund the additional costs in proportion to their respective shareholding. After being proposed by Mr. Anwer Iqbal bearing Folio 06684-92703 and seconded by Mr. Muhammad Faheem holding Folio No.06684-84528, it was:

RESOLVED THAT the Company be and is hereby authorized to make additional equity investment up to an amount of PKR 125,000,000 (Pak Rupees One Hundred and Twenty-Five Million only) by way of subscription of 12,500,000 (Twelve Million Five Hundred Thousand only) new ordinary shares of the face value of Rs.10/- each representing 15% of the total proposed increase in share capital of Hascol Terminals Limited, an associated company.

FURTHER RESOLVED THAT the Secretary of the Company, be and hereby is authorized to complete secretarial formalities and to provide certified copies of the foregoing resolutions. The Chairman declared the resolutions being passed unanimously as Special Resolution".

Unquote

In view of the above, it is evident that HPL did not intend to hide anything from its shareholders and the approval was duly taken them in the AGM held on 28 April 2017. Secondly, the Company (HPL) in its meeting held on 19 February 2020 under Agenda item 6(iv) discussed the matter of advance equity to HTL which is quoted below:

Quote:

Mr. Saleem Butt informed the directors that the Company had given an advance equity to Hascol Terminals Limited (HTL) in 2016. Pursuant to the provisions of the Companies Act, 2017. HTL



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should have issued the shares within 60 days which they did not. He suggested that the Company should inform HTL about this non-compliance and also request them to call a Board meeting immediately to discuss the matter. Mr. Abdul Aziz also showed his concern that Board meetings of HTL are not convened timely due to which important matters are not placed before the Board. He supported the views of Mr. Saleem Butt and requested that HTL should convene a Board meeting to discuss the matter.

Unquote:

It may be noted that the above approved minutes of the meeting were duly shared with the external auditors as well as the Commission during the investigation under section 257 and the Commission vide its letter dated 13 May 2022 sought the explanation from HPL which was duly responded vide HPL's reply dated 17 June 2022 (refer Annexure A).

VAS LNG (Private) Limited:

As of today, investment in VAS amounts to Rs. 3 million (2020: Rs. 3 million) representing 30% (2020: 30%) equity stake and advance against issue of shares to VAS which amounts to Rs. 1.02 (2020; Rs. 1.02) million. HPL holds 0.3 million ordinary shares (2020:0.3 million) of Rs. 10 per share which have been provided in the year 2020 as VAS has already filed liquidation in the month of October 2020 and the Company is not expecting recoverability of its investment. We also attach herewith copy of acknowledgement received from SECP attached as Annexure C) with respect to striking off name of VAS under the Companies (Easy Exist and Restoration) Regulations, 2014.

The contents of paragraph 26 mentioned in the table are partially denied and is not based on facts. The following remarks may be noted and corrected:

Names of Directors	Comments/Facts to be noted
Mr. Mumtaz Hasan Khan	He was a director in 2019 and resigned on 03 March 2020.
Mr. Liaquat Ali	He was director in 2019 until 28 October 2019.
Mr. Paul Anthony Himsforth	He was director since 08 September 2017 and resigned on 23 July 2018. He was on the Board for 11 months only.
Mr. Farid Arshad Masood	It may be noted here that when the Board decisions of forming HTL, VAS LNG and HLPL were taken by HPL, Mr. Farid was not on the Board of HPL since these companies were formed in 2016 & 2017. He joined the Board on 23 July 2018.
Mr. Alan Duncan	It may be noted that that when the Board decisions forming HTL, VAS LNG and HLPL were taken by HPL, Mr. Alan Duncan was not on the Board of HPL since these companies were formed in 2016 & 2017. He joined the Board on 10 March 2020.



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<i>Mr. Aqeel Ahmed Khan</i>	<i>It may be noted here that when the Board decisions of forming HTL, VAS LNG and HLPL were taken by HPL, Mr. Aqeel was not on the Board of HPL since these companies were formed in 2016 & 2017. He joined the Board of HPL on 30 October 2019 for the first time and resigned on 16 December 2019 as he was replaced by Mr. Atif Aslam Bajwa. In 2019 he was director only 46 days approx. Then he was again elected as director on 08 September 2020 in the Board elections of HPL.</i>
<i>Mr. Nauman K. Dar</i>	<i>It may be noted here that when the Board decisions of forming HTL, VAS LNG and HLPL were taken by HPL, Mr. Nauman Dar was on the Board of HPL since these companies were formed in 2016 & 2017. He was not even on the Board in 2019. He joined the HPL's board from 31 March 2020 to 16 July 2021 (approx. for 16 months).</i>
<i>Atif Aslam Bajwa</i>	<i>It may be noted here that when the Board decisions of forming HTL, VAS LNG and HLPL were taken by HPL, Mr. Atif Aslam was not on the Board of HPL since these companies were formed in 2016 & 2017. His total tenure on the Board of HPL was for 3 months approx. commencing from 16 Dec 2019 to 10 March 2020.</i>
<i>Mr. Waheed Ahmed Shaikh</i>	<i>It may be noted here that when the Board decisions of forming HTL, VAS LNG and HLPL were taken by HPL, Mr. Waheed Ahmed Shaikh was not on the Board of HPL since these companies were formed in 2016 & 2017. He was never a director of HPL but was only a CEO of the Company from 04 March 2020 to 02 April 2020 (one month only).</i>

Quote:

Approving investment by the Company in its associated company, VAS LNG (private) Limited

Mr. Liaquat Ali, director, informed the shareholders that VAS LNG (Private) Limited, an associated company of Hascol Petroleum Limited has been set up initially a subsidiary of the Company to eventually operate as a joint venture company. The company will undertake the business of marketing LNG and the investment will be made from time to time in a period of two (2) years. He briefed the benefits of the investment to the shareholders and informed that Company will make an investment of PKR 300,000,000 (30,000,000 ordinary shares of Rs. 10/- each) representing 30% of the total proposed share capital of the VAS LNG (Private) Limited. After being proposed by Mr. Muhammad Ali holding Folio No.04457-65469 are seconded by Mr. Adam A. Habib holding Folio No.03277-80320, members unanimously approved and passed the following resolutions:

RESOLVED THAT the Company be and is hereby authorized to make an equity investment up to an amount of PKR 300,000,000 (Pak Rupees Three Hundred Million) by way of subscription of 30,000,000 (Thirty Million) new ordinary shares of the face value of Rs.10 representing 30% of the total proposed share capital of the VAS LNG (Private) Limited, a newly incorporated associated company.



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FURTHER RESOLVED THAT the Secretary of the Company, be and hereby is authorized to complete secretarial formalities and to provide certified copies of the foregoing resolutions. The Chairman declared the resolutions being passed unanimously as Special Resolution.

Unquote:

The Commission would appreciate that nothing has been concealed from the shareholders since all approvals were taken in the AGM with respect to the investments and every member is aware of these investments.

In view of the above facts and grounds stated on behalf of HPL, we request the SECP to consider the SCN to have been satisfactorily responded and the SCN may be withdrawn. In the event that further clarification is required by the SECP, HPL would like opportunity of further hearing through legal counsel, once the SECP has reviewed the contents of this response.

7. Mr. Atif Aslam Bajwa through his written reply dated September 26, 2022, *inter alia*, submitted as follow:

I write with reference to the subject Show Cause Notice which was provided to me by the management of Hascol Petroleum Limited ('HPL'). I have been informed that HPL is separately engaged with SECP on the Show Cause Notice and is in the process of replying to the same explaining the position of the company.

As regards my position in the matter, please note that I served on the Board of Directors of HPL between 16 Dec 2019 to 10 March 2020 (approx. for 3 months). The decisions questioned in the Show Cause Notice regarding Hascol Terminal Limited, VAS LNG (Private) Limited and other ventures of HPL, were not taken during my tenure with HPL. The companies mentioned in the Show Cause Notice were formed in 2016 and 2017 prior to my engagement with HPL. In view of the foregoing, you may appreciate that the HPL is better placed to assist you in respect of the concerns raised in the Show Cause Notice.

8. Mr. Liaquat Ali submitted the responses detail of which is as follows;

Letter dated October 3, 2022:

I write in relation to the subject show cause notice bearing reference No. CSD/ARN/554/2015-291 dated 26 August, 2022 (the 'SCN') issued by the Securities and Exchange Commission of Pakistan (the 'SECP') to Hascol Petroleum Limited (the 'Company'), listed on the Pakistan Stock Exchange (the 'PSX'), and all members of the board of directors (the 'Board') of the Company including me - a non-executive director on the Board of the Company till October, 2019.

2. *In the first instance, you will appreciate that the matters referred to in the SCN relate to business operations of the Company, as informed by decisions of the Board, which are executed, on a day to day basis by the management team of the Company as headed by the Chief Executive Officer (the 'CEO') of the Company. In this regard you will further appreciate that the law recognizes liabilities of different categories of directors and expressly protects non-executive directors from 'such acts of omission or commission by a listed company' that occur without the knowledge of such non-executive or independent director.*



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3. The relevant provision in this regard is Section 181 of the Companies Act, 2017 (the 'Act') which reproduced hereunder for ease of reference:

"181. protection to independent and non-executive directors. – (1) Notwithstanding anything contained in this Act- -

(a) an independent director; and

(b) a non-executive director;

shall be held liable, only in respect of such acts of omission or commission by a listed company or a public sector company which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently.

(2) For the purpose of this section a non-executive director means, a person on the board of the company who-

a is not from among the executive management team and may or may not be independent;

b is expected to lend an outside viewpoint to the board of a company;

c does not undertake to devote his whole working time to the company and not involve in managing the affairs of the company;

d is not a Beneficial owner of the company or any of its associated companies or undertakings;

e does not draw any remuneration from the company except the meeting fee."

(emphasis provided)

4. Where I am a non-executive director with regards to the business operations of the Company and may also be evaluated as one in accordance with the criteria provided in the above reproduced Section 181 (2) of the Act, the SCN has erroneously been issued to me.

5. In the event that the SECP wishes to pursue any perceived culpability against me, as a non-executive director, for non-compliance or wrongdoing in terms of applicable law, separate and distinct proceedings would need to be initiated for the purpose.

6. Accordingly, in light of provisions of Section 181 of the Act, it is respectfully requested that my name be removed from proceedings sought to be initiated against the Company and its management in terms of the SCN where I am a non-executive director of a listed company and, therefore, protected from adverse consequence originating from acts or omission of the Company.

7. Should the SECP still wish to commence proceedings against me, it is requested that requisite communications, highlighting the perceived contraventions specific to me as a non-executive director, may be initiated separately from the SCN in Order that I may be able to offer satisfactory explanations and be treated in accordance with law. I hope the above is found satisfactory and look forward to hearing from you in this matter.

Letter dated November 28, 2022:

"I refer to your letter dated 23.11.2022 whereby a hearing in the matter has been fixed for 30.11.2022 before Mr. Asif Iqbal, HOD (Adjudication-I).



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In this connection, I have requested vide my letter dated 3.10.2022 that I was a non-executive director of Hascol Petroleum Limited (the "Company") and my responsibility must be evaluated in accordance with the requirements of Section 181(2) of the Companies Act, 2017.

It was also requested that should SECP wishes to commence proceedings against me, the distinct proceedings highlighting perceived violations specific to me as a non-executive director must be initiated separately from the show cause notice dated 26.8.2022 so that I can offer satisfactory explanation and be treated in accordance with law as enshrined in the Constitution of Pakistan.

You would appreciate that I was the only director who had resigned before the expiry of the term of directors in October, 2019 and the paid up capital of the company was Rs. 2 billion only as against current paid up capital of Rs. 10 billion.

In light of the above, I with request, pray that a response to my above referred letter, a copy of which is attached here for ready reference, may be provided before proceeding further in this matter. Accordingly, the hearing fixed for 30.11.2022 may kindly be adjourned or provide me an opportunity of a separate hearing at a later convenient date in the interest of justice and fairness."

Reply dated January 16, 2023:

"I refer to your letter no CSD/ARN/554/2015-687 dated January 05, 2023 whereby a hearing in the matter has been fixed for January 18, 2023 before Mr. Shahzad Afzal Khan, HOD (Adjudication-I).

In this connection, I have requested vide my letters dated 3.10.2022 & letter dated 28.11.2022 that I was a nonexecutive director of Hascol Petroleum Limited (the "Company") and my responsibility must be evaluated in accordance with the requirements of Section 181(2) of the Companies Act, 2017.

It was also requested that should SECP wishes to commence proceedings against me, the distinct proceedings highlighting perceived violations specific to me as a non-executive director must be initiated separately from the show cause notice dated 26.8.2022 so that I can offer satisfactory explanation and be treated in accordance with law as enshrined in the Constitution of Pakistan.

You would appreciate that I was the only director who had resigned before the expiry of the term of directors in October, 2019 and the paid up capital of the company was Rs. 2 billion only as against current paid up capital of Rs. 10 billion. In light of the above, I with request, pray that a response to my above referred letters, copies attached hereto for ready reference, may be provided before proceeding further in this matter. Accordingly, the hearing fixed for 18.1.2023 may kindly be adjourned in the interest of justice and fairness."

Reply dated March 30, 2023:

I refer to the hearing held on 6th March 2023 in respect of above-mentioned show cause notice dated 26th August, 2022. As explained during the said hearing, the management of company got board approval for investment in VAS LNG (Private) Limited (VAS) and Hascol Terminal Limited subject to approval of shareholders. A copy of the board resolution is attached herewith as Annex A. It was the responsibility of the



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management of the company to ensure compliance of all regulatory requirements for such investment including approval of the shareholders under Section 199 of the Companies Act, 2017.

The board approval for transfer of lubricant plant assets from Hascol Petroleum Limited to its subsidiary Hascol Lubricants (Pvt.) Limited was placed before the board in board meeting held on 29th August 2019. The relevant extract of the board minutes are reproduced below.

“FURTHER RESOLVED that the CEO of the company and the [Company Secretary] jointly be and are hereby authorized to take all necessary actions for implementing the aforesaid resolutions, including but not limited to subscribing to the equity of HLPL to the extent of PKR 3,150,000,000 in cash for the funding the acquisition of the lubricant assets specified in exhibit A from the company at book value of PKR 2,000,000,000 and funding the working capital of the lubricant business in HLPL and/or formalities for transfer of the lubricant assets by way of consideration other than cash, in consultation with the legal, accounting and tax advisors, execution of any document including shares subscription agreement, land lease/license/sub-lease agreement and asset sale agreement with HLPL and all other incidental action as required including processing of any regulatory approvals.”

You would appreciate that the above-board resolutions requires the management to take all necessary actions including processing of regulatory approvals. As explained during the said hearing, I did not attend board meeting held in September 2019 and October 2019 as I had tendered my resignation as board member prior the above-board meetings. I had requested Hascol to provide information to enable me to respond to SECP show cause notices but they have regretted to provide me such information. A copy of the Hascol letter dated 22nd March 2023 is attached herewith for your information. As briefed during the said hearing on 6th March 2023 with documentary proofs, I have suffered huge losses just like any other public shareholder of the company and I was the only director of the company who resigned from the Board and again invested huge amount of Rs. 105,019,110 through subscription or right shares in January 2020 as a general public shareholder to recover my past huge losses but unfortunately I again suffered huge loss for investment in Hascol Petroleum Limited. I pray that show cause notice dated 26th August 2022 issued to me be withdrawn without adverse action against me.”

9. Mr. Mumtaz Hasan Khan through written reply dated October 04, 2022, *inter alia*, submitted as follows:

I write with reference to the subject Show Cause Notice which was provided to me by the management of Hascol Petroleum Limited ('HPL'). I have been informed that HPL separately engaged with SECP on the Show Cause Notice and is in the process of replying to the same explaining the position of the company. Being a former director of HPL I do not have any access to the records of HPL pertaining to the issues raised in the subject Show Cause Notice.

I believe that the management of HPL has all the facts and records available and accordingly HPL is better placed to assist you in respect, of the concerns raised in the Show Cause Notice. To the extent not contrary to my specific status as a former director of HPL, I would propose to rely on the submission of the management of HPL in response to the subject Show Cause Notice. I trust that you will find the above satisfactory.



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10. Mr. Nauman Karamat Dar through reply dated September 30, 2022 submitted through FGE Ebrahim Hosain, Barrister, Advocates & Corporate Legal Consultants, *inter alia*, submitted that:

We write on behalf of Mr. Nauman Karamat Dar ('Our Client'), who has placed with us your subject matter Show Cause Notice dated 26 August 2022 (Show Cause Notice) was received by our client from the management of Hascol Petroleum Limited ('HPL'). We have been informed that HPL is separately engaged with SECP on the Show Cause Notice and is in process of replying to the same explaining the position of the company. As regards the position of our Client, please note that he was on Board of Directors of HPL from 31 March 2020 to 16 July 2021 (approximately for 16 months). The decisions questioned in the Show Cause Notice regarding Hascol Terminal Limited, VAS LNG (Private) Limited and other ventures of HPL, were not taken during the time when our Client was on Board of HPL. Please note that the companies mentioned in the Show Cause Notice were formed in 2016 and 2017. In view of the forgoing, you may appreciate that our client has no nexus with the transactions under scrutiny. We trust that you will find the above helpful and the show cause against our Client may thus be withdrawn.

11. Mr. Farooq Rahmatullah Khan submitted the responses detail of which is as follows;

Letter dated December 2, 2022:

"I was a Non-Executive Director on the Board of Hascol Petroleum Limited (HPL) from December 2012 till September 2020 and in this capacity, I am in receipt of the SCN.

From the SCN it appears that SECP has conducted again certain investigations into the affairs of HPL and consequently SCN was issued. In this respect it is noted that I was not aware of any ongoing investigation by SECP in the affairs of HPL nor SECP at any point in time included myself in the said investigation process. It is also important to note that the record of the said investigation or the relevant documents pertaining to the investigation were also not shared or shown to me. SECP adjudication held a hearing on the SCN on November 30, 2022, which was attended by me along with a representative of HPL and some of the other recipients of the SCN.

A brief of hearing held on November 30, 2022 at 2:30 PM is as under:

- *Mr. Saleem Chamdia Advocate representing Mr. Saleem Butt stated that Hascol Lubricants Pvt Ltd., is 100% owned by the HPL therefore, Section 199 of the Companies Act, 2017 with respect to the investments in associated company are not applicable. He further stated that in this situation charging interest or profit would have made no difference also because in the consolidated financial statements this amount would be mentioned only once.*
- *Mr. Chamdia also adopted the letter of HPL dated September 26, 2022, written to SECP in response to SCN.*
- *Mr. Nauman Dar submitted that his appointment on HPL Board was subsequent to the occurrence of the events referred in SCN. In response SECP asked Mr. Dar to substantiate his position through Form-29.*
- *Mr. Najamus Saquib Hameed stated that being an independent director his involvement int the affairs of HPL was minimal, however, it was management's responsibility to comply with or fulfil*



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- the legal and regulatory obligations.*
- *Mr. Aqeel Ahmed Khan submitted that his appointment on HPL Board was subsequent to occurrence of the events referred to in SCN. In response SECP asked Mr. Dar to substantiate his position through Form-29.*
 - *Mr. Rahmtullah Khan referred to his previous position as one of the industry leader and through the career worked honestly for the utmost benefit of the company and have never even remotely been accused of damaging any company.*
 - *Any business proposition submitted for the consideration of the Board of HPL was thoroughly discussed from the business and future prospects point of view and the decision was always taken keeping in view the best of HPL. In this process there is a clear assumption that the management shall be responsible for complying with all the legal and regulatory requirements and obligations with respect to the proposition as Board members are not in this position.*
 - *Mr. Mumtaz Hasan Khan in the capacity of former Board Member denied the allegations and stated that Board does not get involved in the management related affairs.*

It is noted that HPL as one of the recipients of the SCN has submitted a response letter dated September 26, 2022. In the said letter HPL has contended that the Hon'ble Sindh High Court has granted a stay order against the instant proceedings; however, a copy of the stay order has not been shared. Accordingly, it is my submission that SECP Adjudication should at the outset consider the order of the Hon'ble Sindh High Court before proceeding further in this matter.

Kindly note that even though I was identified as the Non-Executive Director of HPL however, I never had any employment or business relationship with any of the sponsor shareholders of HPL. Accordingly, I never participated in the day-to-day matters, management affairs and decisions in HPL. Therefore, my knowledge of the business and management affairs of HPL was restricted to the extent of the documents and information as shared with the Board along with the discussions in the Board Meetings of HPL.

I do hereby record my submissions that the approvals made by the Board of HPL regarding the investments in the associated companies of HPL were thoroughly discussed in the Board as proposed by the management. In this respect it was a clear understanding that all the legal and regulatory requirements will be fulfilled and complied with by HPL's management as this was the responsibility of the management. As such, the decisions were made in the best interests of HPL without a hint of taking any personal benefit or causing any detriment to the corporate image of HPL.

With respect to the process followed in HPL it is submitted that the agenda of the board meeting was decided against Chairman, CEO and the Company Secretary of HPL whilst the proposals or recommendation from a board member were not requested or called. It is also submitted that to my recollection the matters related to the regulatory compliances with respect to the investment in various projects and SECP related matters were never a part of the agenda of the Board Meetings. It is further submitted that the Board cannot be held responsible if there was a non-compliance of any such requirement and the report of such a non-compliance was not shared with the Board or any of its sub-committees. Accordingly, it is requested that the matter may be decided keeping in view the above submissions whereby I have clarified my position and role in the proceedings of the Board of HPL vis a vis the SCN."



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Letter dated January 13, 2023:

"I write with reference to the captioned subject. Through email dated January 9, 2023, Mr. Farhan Ahmad Company Secretary of Hascol Petroleum Ltd., (HPL) forwarded to me a Hearing Notice dated January 5, 2023, by the Commission with respect to the Show Cause Notice dated August 26, 2022 (SCN). It is submitted that previously a hearing was conducted by the Commission on the SCN on November 30, 2022, which I personally attended and in that I provided all the information available with me. Further, as directed in the said hearing, I submitted a written response dated December 2, 2022, which is attached herewith for ease of reference.

Kindly note that my term as a director on the Board of HPL concluded in September 2020. Even through I have been identified as the Non-Executive Director of HPL, I had in fact no relationship with any of the sponsor shareholders of HPL or any of its group companies which position is akin to being an independent director. Accordingly, in my capacity I never participated in day-to-day matters, management affairs and management decisions in HPL.

Kindly note that as one of the former directors of HPL I do not have access to the records, documents and information pertaining to HPL and the matters pertaining to SCN. In this respect, it is important to note that previously in proceedings under another Show Cause Notice dated June 30, 2022, under the direction of the Commission I requested HPL to provide the relevant record however, this request was categorically declined by HPL. My letter to HPL and the response letter are attached herewith for ease of reference. As such, I am also not in the position to obtain any record, document or information from HPL which may provide assistance in the proceedings under SCN. As such, I am not able to contribute materially towards the proceedings, response to any observation or defend myself.

In this respect I would like to resubmit that the approvals given by the Board of HPL regarding the investments in the associated companies of HPL were duly discussed in the Board as proposed by the management and on the basis of presentations and the information provided by the management. As such, the decisions were made in the best interests of HPL without a hint of taking any personal benefit or causing any detriment to the corporate image of HPL.

It is my submission that without the review or sight of the presentation, documents and information provided by HPL to the Board in relation to the matters under review in the SCN, a further hearing or my attendance of the said hearing will not be of any significance.

Based on the above, it is requested that the matter may be decided keeping in view the above submissions and my earlier letter dated December 2, 2022, whereby I have clarified my position and role in the proceedings of the Board of HPL viz a viz the SCN. Accordingly, I may also be exempted from attending the hearing scheduled on January 18, 2023."

12. Haidermota & Co., Advocates, acting on behalf of Paul Anthony Himsworth, Sir Alan Duncan, Mr. Farid Masood and Mr. Abdul Aziz Khalid, through letter dated February 15, 2023, *inter alia*, submitted that:



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Response on behalf of Mr. Paul Anthony:

"That at the very outset, it is most humbly submitted that the subject investments were made by HPL in the year 2016-17. It is respectfully submitted that the subject investments were made by HPL in the year 2016-17. It is respectfully pointed out that our Client / Paul Anthony Himsworth has been included by the Commission in the list of Respondents. It is a matter of record that our client was on the Board of HPL from September 2017 to July 2018, as a nominee of Vitol Dubai. However, he did not attend any meetings relating to investments in the aforesaid companies and therefore he had no role in the management decisions pertaining to the investments. That even otherwise, it is pertinent to note that Vitol nominee(s) were purely non-executive directors, and they had no role in the management decisions of the Hascol Petroleum Limited. That without prejudice to the foregoing, our Client has been advised that HPL has already given you a substantive reply which shows that nothing has been concealed from the shareholders since all approvals were taken in the AGM with respect to the investments in the afore-stated companies.

That in light of the aforesaid submissions, we humbly and respectfully request you to withdraw the said SCN against our Client."

Response on behalf of Sir Alan Duncan:

"That at the very outset, it is most humbly submitted that the subject investments were made by HPL in the year 2016-17. It is respectfully pointed out that our Client/Sir Alan Duncan has been included by the Commission in the list of Respondents. However, it is a matter of record that he joined the Board of HPL, as a nominee of Vitol Dubai, on March 10, 2020. Thus, our Client had no role in the management decisions pertaining to the investments during the aforesaid period in the three subject companies.

That even otherwise, it is pertinent to note that Vitol nominee(s) were purely non-executive directors, and they had no role in the management decisions of the Hascol Petroleum Limited. That without prejudice to the foregoing, our Client has been advised that HPL has already given you a substantive reply which shows that nothing has been concealed from the shareholders since all approvals were taken in the AGM with respect to the investments in the afore-stated companies. That in light of the aforesaid submissions, we humbly and respectfully request you to withdraw the said SCN against our Client."

Response on behalf of Mr. Farid Arshad Masood:

"That at the very outset, it is most humbly submitted that the subject investments were made by HPL in the year 2016-17. It is respectfully pointed out that our Client/Mr. Farid Arshad Masood has been included by the Commission in the list of Respondents. However, it is a matter of record that he joined the Board of HPL, as a nominee of Vitol Dubai, on July 23, 2018. Thus, our Client had no role in the management decisions pertaining to the investments during the aforesaid period in the three subject companies. That even otherwise, it is pertinent to note that Vitol nominee(s) were purely non-executive directors, and they had no role in the management decisions of the Hascol Petroleum Limited.

That without prejudice to the foregoing, our Client has been advised that HPL has already given you a substantive reply which shows that nothing has been concealed from the shareholders since all approvals



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were taken in the AGM with respect to the investments in the aforesaid companies. That in light of the aforesaid submissions, we humbly and respectfully request you to withdraw the said SCN against our Client."

Response on behalf of Mr. Abdul Aziz Khalid:

"That at the very outset, it is most humbly submitted that Vitol nominee(s) were purely non-executive directors, and they had no role in the management decisions of the Hascol Petroleum Limited. That without prejudice to the foregoing, our Client has been advised that HPL has already given you a substantive reply which shows that nothing has been concealed from the shareholders since all approvals were taken in the AGM with respect to the investments in the aforesaid companies.

That in light of the aforesaid submissions, we humbly and respectfully request you to withdraw the said SCN against our Client."

13. Mr. Salim Chamdia on behalf of Mr. Saleem Butt, through letter dated March 2, 2023, *inter alia*, submitted that:

"Please refer to the hearing held on Feb 08, 2023 at 10:00 am relating to SCN/CSD/ARN/554/2015-291 dated August 26, 2022, the under signed attended the meeting as authorized representative of Mr. Saleem Butt and made following defense.

Our client Mr. Saleem Butt has resigned in Oct 2019 from Hascol Petroleum Limited (HPL), therefore, currently he has no access to the records of HPL. In this regards, a letter dated SEP 07, 2022 was written to CEO-HPL Mr. Aqeel Khan for providing the required record (Enclosed as an Annexure-A). HPL conveyed to us that on our request for provision of records was sent to SECP for approval and SECP left the decision to HPL whether provide the data or not. HPL subsequently conveyed to us that required data/record is confidential in nature and cannot be provided to our Client (Enclosed as an Annexure-B).

Hence in the absence of record, it is not possible for our client to respond to you on SCN, and any action from SECP will be unjustified to our client, as in the absence of data, my client cannot defend himself. Now since, HPL has made a reply, against subjected SCN, as we have no choice but to adopt the same reply by our client (without sub-judice). We would like to further highlight that Hascol Lubricant (Pvt.) Limited (HPL) was formed as owned wholly subsidiary from its inception. Since, it is 100% on subsidiary, practically there is no advantage / disadvantage of charging mark-up on advance against equity. As the same will be nullified, while preparing consolidated financial statements of HPL and HLPL."

14. Haidermota & Co., Advocates, acting on behalf of Paul Anthony Himsworth, Sir Alan Duncan, Mr. Farid Maood and Mr. Abdul Aziz Khalid, through letter dated March 22, 2023, *inter alia*, also submitted that:

Reply on behalf of Paul Anthony Himsworth:

"That further to our response dated February 15, 2023, and hearing dated March 06, 2023, wherein it was, inter alia, submitted that Our Client being a Vitol Nominee was purely a non-executive director and had no



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role in the management decision of the Hascol Petroleum Limited ("HPL" "Company"), we would like to apprise the Commission that upon review of the minutes of the board of directors' meeting of the Company held after the investments were made in the subject entities. Our Client was only part of two board meetings dated October 13, 2017, and January 29, 2018. Furthermore, it is noteworthy that the issue pertaining to the investments made by the Company with respect to the subject entities was never discussed during the board meetings attended by Our Client.

That even otherwise, it is reiterated that Our Client was a nominee director of Vitol Dubai and has no role in the management decisions and/or the investments made by the Company. That, therefore, in light of the aforesaid and position taken earlier through our response and hearing, we would humbly request you to withdraw the said SCN against Our Client."

Reply on behalf of Abdul Aziz Khalid:

"That further to our response dated February 15, 2023, and hearing dated March 06, 2023, wherein it was, inter alia, submitted that Our Client being a Vitol Nominee was purely a non-executive director and had no role in the management decision of the Hascol Petroleum Limited ("HPL" "Company"), we would like to apprise the Commission that upon review of the minutes of the board of directors' meeting of the Company held after the investments were made in the subject entities, the issue pertaining to the investment in subject entities was never discussed during the board meetings.

That even otherwise, it is reiterated that Our Client was a nominee director of Vitol Dubai and has no role in the management decisions and/or the investments made by the Company. That, therefore, in light of the aforesaid and position taken earlier through our response and hearing, we would humbly request you to withdraw the said SCN against Our Client."

Reply on behalf of Farid Arshad Masood:

"That further to our response dated February 15, 2023, and hearing dated March 06, 2023, wherein it was, inter alia, submitted that Our Client being a Vitol Nominee was purely a non-executive director and had no role in the management decision of the Hascol Petroleum Limited ("HPL" "Company"), we would like to apprise the Commission that upon review of the minutes of the board of directors' meeting of the Company held after the investments were made in the subject entities, the issue pertaining to the investment in subject entities was never discussed during the board meetings.

That even otherwise, it is reiterated that Our Client was a nominee director of Vitol Dubai and has no role in the management decisions and/or the investments made by the Company. That, therefore, in light of the aforesaid and position taken earlier through our response and hearing, we would humbly request you to withdraw the said SCN against Our Client."

Reply on behalf of Sir Alan Duncan:

"That further to our response dated February 15, 2023, and hearing dated March 06, 2023, wherein it was, inter alia, submitted that Our Client being a Vitol Nominee was purely a non-executive director and had no role in the management decision of the Hascol Petroleum Limited ("HPL" "Company"), we would like to



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apprise the Commission that upon review of the minutes of the board of directors' meeting of the Company held after the investments were made in the subject entities, the issue pertaining to the investment in subject entities was never discussed during the board meetings.

That even otherwise, it is reiterated that Our Client was a nominee director of Vitol Dubai and has no role in the management decisions and/or the investments made by the Company. That, therefore, in light of the aforesaid and position taken earlier through our response and hearing, we would humbly request you to withdraw the said SCN against Our Client."

15. The Commission through email dated April 7, 2023 requested Haidermota & co. to provide valid power of attorney of Sir Alan Duncan. In this regard, through email dated April 10, 2023 valid power of attorney was furnished.

16. In order to afford the Respondents hearing opportunities, the matter was fixed for various dates as per following details:

(a) **Hearing held on November 30, 2022**

Following Respondents appeared and, *inter alia*, stated:

- (i) Mr. Mumtaz H. Khan submitted that relevant record was not provided by the Company as he retired from the board.
- (ii) Mr. Salim Chamdia, on behalf of Mr. Saleem Butt, submitted that the Company did not provide relevant record to him. He also submitted that consequent to SRO 1239/2017, the investments made in subsidiaries were exempt from the requirements of Section 199 of the Act.
- (iii) Mr. Farooq Rahmtullah denied allegations and stated that he was non-executive director.
- (iv) Mr. Najamus Saquib submitted that the management never put before the board any information that approval of shareholders was required for making investments in associated companies. Moreover, he was an independent director.
- (v) Mr. Aqeel A. Khan submitted that he was on the board from October 30, 2019 to December 6, 2019 and during the said period no transactions, as alleged, were occurred.
- (vi) Mr. Nauman K. Dar submitted that he was on the board from March 31, 2020 to July 16, 2021 and during the said period no transaction was carried as alleged in the SCN.

(b) **Hearing held on January 18, 2023**

Following Respondents appeared and, *inter alia*, submitted:

- (i) Mr. Nauman K. Dar reiterated his earlier stance as was stated.
- (ii) Mr. Aqeel A. Khan also informed that he was not acting as director during the period when transactions, as alleged, occurred.

The Company Secretary who was present in the hearing was requested to provide



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relevant copies of forms so that the directorship dates could be verified.

(c) **Hearing held on February 8, 2023**

Following Respondents appeared and, *inter alia*, stated:

- (i) Mr. Mumtaz H. Khan submitted that he fully endorsed the views as submitted through written reply pursuant to the instant SCN u/s 199 of the Act. He stated that mark-up charges should not apply in the given case as investments were made in the subsidiaries.
- (ii) Mr. Waheed A. Sheikh submitted that he joined as Chief Executive on March 4, 2020 and resigned on April 1, 2020. During these days he was not privy to any issue as highlighted in the SCN.
- (iii) Mr. Salim Chamdia on behalf of Mr. Salim Butt submitted that the Respondent written to the Company for provision of related information, however, the Company did not provide any information. He submitted that under protest he agreed with the written reply submitted by the Company pursuant to the instant SCN u/s 199. He also submitted that subsidiaries consolidate with the parent and any mark-up charge would set off, so not charging mark-up on investments in subsidiaries did not have any financial impact.

The Respondents were requested to furnish attendance sheets.

(d) **Hearing held on March 6, 2023**

Following Respondents appeared and, *inter alia*, submitted:

- (i) Mr. Mumtaz H. Khan stated to adopt the reply of the Company as given in writing pursuant to instant SCN. He resigned three years ago and had no relevant information in the matter.
- (ii) Mr. Shayan Karimi and Mr. Jahanzeb Awan appeared on behalf of Paul Anthony Himsworth, Sir Alan Duncan, Mr. Farid Maood and Mr. Abdul Aziz Khalid:
 - It was submitted that the said Respondents were acting as nominee directors of Vitol and were non-executive directors and Section 181 of the Act provides immunity in the matter.
 - Mr. Alan Duncan joined board on March 10, 2020 and he was not involved in any decision making of the said investments.
 - Mr. Farid joined the Company in July 2018 as nominee director and was not part of any board meeting in which decision to make investments in the associated companies were approved and provision of Section 181 of the Act is applicable.
 - Mr. Paul Himsworth was director on the board from September 2017 to



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July 2018. He was not part of any decision making for making investments in associated companies and provision of Section 181 of the Act is applicable.

- Mr. Abdul Aziz Khalid was not involved in managing the affairs of the Company. He was non-executive director and provision of Section 181 of the Act is applicable.

(e) **Hearing held on March 7, 2023**

Mr. Liaquat Ali appeared and, *inter alia*, submitted that:

- The mark-up recovery from subsidiary companies had no effect. The amounts of investments made in subsidiary companies were immaterial during his tenure of directorship.
- A lenient view be taken keeping in view that the amounts of investments were not substantial and such investments were made in wholly owned subsidiaries.

17. Mr. Atif Aslam Bajwa has been provided the hearing opportunities on November 30, 2022, January 18, 2023, February 8, 2023, March 6, 2023 respectively. He, however, did not appear in the hearings fixed on the afore stated dates despite it was notified through the hearing notice dated February 27, 2023 in case of non-appearance, the matter would be decided as per available record. Therefore, I am constrained to conclude the matter based on the available record.

18. As per available record, the Respondents were acting on the board of directors of the Company as per following details:

- (i) Mr. Mumtaz Hasan Khan was acting as director from September 8, 2014 till March 18, 2020.
- (ii) Mr. Abdul Aziz Khalid was acting as director since March 30, 2016.
- (iii) Mr. Farooq Rahmtullah Khan was acting as director from September 8, 2014 till September 8, 2020.
- (iv) Mr. Najmus Saquib Hameed was acting as director from September 8, 2014 till September 8, 2020.
- (v) Mr. Saleem Butt was acting as director from September 8, 2014 till March 5, 2020. He was also acting as Chief Executive of the Company.
- (vi) Mr. Liaquat Ali was acting as director from September 8, 2014 till October 28, 2019.
- (vii) Mr. Paul Anthony was acting as director from September 8, 2017 till July 23, 2018.
- (viii) Mr. Farid Arshad Masood was acting as director from July 23, 2018 till September 8, 2020.
- (ix) Mr. Alan Duncan was acting as director/Chief Executive from March 10, 2020 till date.
- (x) Mr. Aqeel A. Khan was acting as director from October 30, 2019 till December 16, 2019;
- (xi) Mr. Nauman K. Dar was acting as director from March 31, 2020 onwards.
- (xii) Mr. Atif Aslam Bajwa was acting as director from December 16, 2019 till March 10, 2020.
- (xiii) Mr. Waheed A. Shaikh was acting as director from March 4, 2020 till April 20, 2020.



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19. Relevant provision are reproduced as hereunder:

Section 199(1) of the Act provides that:

199. *Investments in associated companies and undertaking.* – (1) A company shall not make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution which shall indicate the nature, period, amount of investment and terms and conditions attached thereto. Explanation: The term investment' shall include equity, loans, advances, guarantees, by whatever name called, except for the amount due as normal trade credit, where the terms and conditions of trade transaction(s) carried out on arms-length and in accordance with the trade policy of the company.

Section 199(2) of the Act provides that:

(2) *The company shall not invest in its associated company or associated undertaking by way of loans or advances except in accordance with an agreement in writing and such agreement shall inter-alia include the terms and conditions specifying the nature, purpose, period of the loan, rate of return, fees or commission, repayment schedule for principal and return, penalty clause in case of default or late repayments and security, if any, for the loan in accordance with the approval of the members in the general meeting:*

Provided that the return on such investment shall not be less than the borrowing cost of the investing company or the rate as may be specified by the Commission whichever is higher and shall be recovered on regular basis in accordance with the terms of the agreement, failing which the directors shall be personally liable to make the payment:

Provided further that the directors of the investing company shall certify that the investment is made after due diligence and financial health of the borrowing company is such that it has the ability to repay the loan as per the agreement.

Regulation 4(2) of the Regulations provides that:

(2) *In case any decision to make investment under the authority of a resolution passed pursuant to provisions of section 199 of the Act is not fully implemented in line with the approval of members till the holding of subsequent general meeting, the status of the decision shall be explained to the members through a statement having the following details namely,- (a) total investment approved; (b) amount of investment made to date; (c) reasons for deviations from the approved timeline of investment, where investment decision was to be implemented in specified time; and (d) material change in financial statements of associated company or associated undertaking since date of the resolution passed for approval of investment.*

Regulation 5(3) of the Regulations provide that:

(3) *Share deposit money shall be transferred for equity investment only after announcement of the offer for issue of shares by the associated company or associated undertaking and if shares are not issued within ninety days or within the time prescribed by the relevant legal and regulatory framework, whichever is later, such share deposit money shall be treated as loan, which shall be subject to interest, mark up or return from the date of transfer of funds in accordance with the provisions of section 199 of the Act.*



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Regulation 5(4) of the 2017 Regulations states that:

"5(4) The rate of return on loans, advances and debt securities etc. shall not be less than Karachi Inter Bank Offered Rate (KIBOR) for the relevant period or the borrowing cost of the investing company, whichever is higher: Provided that where a company opts for Shariah compliant mode of financing, the transactions shall be structured in such a way that the rate of return on such facilities is not less than that earned by Islamic Banks or Islamic Financial Institutions in Pakistan on similar facilities during the corresponding time period or the borrowing cost of the investing company, whichever is higher."

Regulation 8 of the 2017 Regulations provide that:

Penalty.- Any contravention of the regulations shall be punishable with a penalty which may extend to five million rupees and, where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues

Section 199(6) of the Act states that:

"Any contravention or default in complying with requirements of this section shall be an offence liable to a penalty of level 3 on the standard scale and in addition, shall jointly and severally reimburse to the company any loss sustained by the company in consequence of an investment which was made without complying with the requirements of this section."

20. I have gone through the facts of case as well as the record available with the Commission. I have also considered the submissions made in writing as well during the hearing proceedings. In this regard, I hereby conclude the matter in the following manner:

A. Investments made in HLPL:

With regard to the investment made in HLPL, it is, hereby, reiterated that the examinations of financial statement of the company and Investigation Report, *inter alia*, highlighted that the Company had given advance for issue of shares of **Rs. 3,087 million** during year 2019 (2018: **Rs. 3.3 million** and 2017: **Rs. 2 million**) to HLPL. Relevant note 41 to the Accounts 2019, *inter alia*, in this regard disclosed that: *"41: Loss from discontinued operations: The Board of Directors of the Company in their meeting held on August 29, 2019 has approved the transfer of its lubricant business operations to its wholly owned subsidiary company, Hascol Lubricants (Private) Limited with effect from October 21, 2019. These operations are now part of the subsidiary and are taken as disposed in these unconsolidated financial statements."*

The increase in advance for issue of shares during the year 2019 was mainly due to transfer of assets of the Company amounting to Rs. 2,948 million and the said transfer was with effect from October 21, 2019. In this regard, the matter has been deliberated as follow:

- (i) **Violation with the provisions of Section 199(1) of the Act i.e. investments of Rs. 3.3 million (2018: Rs 3.3 million and 2017: Rs. 2 million) in associated company i.e. HLPL, as advance against purchase of shares, without the approval of the members.**



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- At the outset, I would like to mention here that none of the Respondent during the hearing proceedings as well as in written submission, furnished any cogent arguments/justification with respect to the alleged non-compliance of Section 199(1) of the Act for the investment of Rs. 3.3 million. Moreover, nothing has been placed before me to contend that violation was not incurred for the said investment, rather the arguments put forward primarily relates to the tenure of respective directors at the time of aforesaid investment.
- During the instant proceedings, the Company has contended that HLPL was incorporated on January 31, 2017 and intended to be the wholly owned subsidiary of HPL (holding company) and the provisions of Section 199(1) of the Act were not applicable for investment in HLPL. In this regard, it is stated that as per available record of the Commission, HLPL was an associated company and became wholly owned subsidiary with effect from July 01, 2019. The record available with the Commission reflects that earlier to July 01, 2019; Mr. Saleem Butt, Mr. Muhammad Ali Ansari and Mr. Mumtaz H. Khan each held 50,000 shares (total 150,000 shares). While on July 01, 2019, the each of said directors transferred 49,900 shares to Hascol Petroleum. Due to common directorship of Mr. Saleem Butt and Mr. Mumtaz H. Khan, both the Company and HLPL were associated companies. This fact has not been confronted by the Respondents. Therefore, any investment made by the Company before July 01, 2019 in HLPL was subject to the approval of the members in term of Section 199(1) of the Act. Therefore, stance taken in this regard is not acceptable, hence, disallowed. I am therefore of the view that aforesaid investment of Rs. 3.3 million made in HLPL, as disclosed in the years 2017 and 2018, was without approval of the members and is in violation of Section 199(1) of the Act.

(ii) **Violation with the provisions of Section 199(2) of the Act i.e. by not charging interest on Rs 3.3 million up to October 07, 2019:**

- It was also contended during the hearing proceedings that since the members' approval for investment in wholly owned subsidiary is exempt in term of SRO 1239 of 2017; so the application of mark-up in term of Section 199(2) of the Act was not required. In this regard, I would like to point out that SRO 1239 of 2017 (the SRO) explicitly provides for the exemption only to the extent of applicability of Section 199(1) of the Act, i.e. members approval is not required for investment in wholly owned subsidiary. The said SRO, however, does not provide for any such exemption from the provisions of Section 199(2) of the Act. In terms of Section 199(2) of the Act, it is required that return on such investment shall not be less than the borrowing cost of the investing company or the rate as may be specified by the Commission whichever is higher and shall be recovered on regular basis. Therefore, in term of Section 199(2) of the Act, it is mandatory that return on such investment shall not be less than the borrowing cost of the investing company or the rate as may be specified by the Commission whichever is higher and shall be recovered on regular basis. The Company, however, did not recover any mark-up against advance against purchase of shares of Rs. 3.3 million, hence, violation of Section 199(2) of the Act is attracted for non-recovery of mark-up against the said investment.



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(iii) **Violation with the provisions of regulation 5(3) of the Regulations i.e. issuance of shares beyond period of ninety days and by not treating such amount as loan subject to mark-up/interest:**

- Regulation 5(3) of the Regulations requires that if shares are not issued within ninety days or within the time prescribed by the relevant legal and regulatory framework, whichever is later, such share deposit money shall be treated as loan, which shall be subject to interest, mark up or return from the date of transfer of funds in accordance with the provisions of Section 199(2) of the Act.
- The Investigation Report, in addition to the aforesaid disclosures, stated that the Company had given an advance to HLPL against purchase of shares which increased to Rs. 3,087 million during the year 2019 (2018: Rs. 3.3 million). The advance in the year 2019 increased considerably by the amount of Rs. 2,948 million as the Company had transferred its lubricant business to the subsidiary company HLPL. In terms of note 41 to the Accounts 2019, the Company disclosed its investments in HLPL as given below:

"41: Loss from discontinued operations: The Board of Directors of the Company in their meeting held on August 29, 2019 has approved the transfer of its lubricant business operations to its wholly owned subsidiary company, Hascol Lubricants (Private) Limited with effect from October 21, 2019. These operations are now part of the subsidiary and are taken as disposed in these unconsolidated financial statements."

The Company in this regard has submitted that HLPL was a wholly owned subsidiary and under SRO 1239 of 2017 (the SRO), it explicitly provides for an exemption from the requirements of Section 199(1) of the Act for investment in wholly owned subsidiary. Moreover, the Company in its correspondence dated June 17, 2022, *inter alia*, stated that: *"The HPL group consists of Hascol Petroleum Limited (a holding company) and Hascol Lubricants is a wholly owned subsidiary company of HPL, which was incorporated on 31st January 2017. The primary object of Hascol Lubricants is to carry on the business of blending and producing of lubricating oils, greases and other petroleum products. Therefore, the requirements of Section 199 are not applicable on this transaction given that Section 199 relates to investments in associated companies, whereas HLPL is a wholly owned subsidiary company of HPL. SRO 1239(I)/2017 of the SECP explicitly provides for an exemption to Section 199 of the Companies Act, 2017 for investments in wholly owned subsidiaries."*

In this regard, it is stated that the Company made an advance against purchase of shares amounting Rs. 2,948 million, to HLPL, with effect from October 21, 2019. As per available information, HLPL announced offer for issuance of shares on October 7, 2019 and shares against advance were issued on March 5, 2020. In terms of regulation 5(3) of the Regulations, if shares are not issued within ninety days or within time as prescribed by the relevant legal and regulatory framework, such share deposit money shall be treated as loan, which shall be subject to interest, mark-up or return from the date of transfer of funds. In the said case, the shares were required to be issued latest by January 05, 2020; which were, however, issued on March 05, 2020



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i.e. with the delay of two months. Hence, delay of two months beyond ninety days period was evident. Consequently, the Company was required to treat Rs 2,948 million as loan or advance. The Company, however, did not charge mark-up from the October 21, 2019 till March 5, 2020, i.e. from the date of transfer of the funds, in contravention with the provisions of Section 199(2) of the Act read with regulation 5(3) of the Regulations, by not treating the advance of Rs. 2,948 million against shares as loan.

- As regard to the stance of the Respondents that consequent to investments made in wholly owned subsidiary no loss was incurred, however, the said argument holds no ground. In this connection, it is stated that in terms of the requirements of the Act and of the Regulations it is required to recover mark-up on the loans extended to subsidiary companies as per the requirements of Section 199(2) of the Act read with the Regulations and in case of the Company, the said violations are attracted for the aforesaid investments.

B. Investments in Karachi Hydrocarbon Terminal Limited (formerly Hascol Terminal Limited):

- In the instant matter, it has been pointed out that in case of investments in HTL, the shareholders of the Company in AGM held on April 28, 2017, granted approval to make investment of Rs.125 million equity investment to be made in HTL. Furthermore, the Company has sought approval of Rs.375 million in the EOGM held on June 29, 2016. Thus, the Company had total approval or authorization of Rs.500 million for making equity investments in HTL. The Company during the periods ended on December 31, 2016 and June 30, 2017 made advances of Rs. 208.808 million and Rs.193.100 million respectively. Further, the record of the Company transpires that the "Advance against purchase of shares" was Rs. 40 million as of 2019 (2018: Rs. 40 million and 2017: Rs. 57.685 million).
- Review of the record reflects that HTL made following announcements of offers for issue of shares:
 - (i) In respect of 148 million shares issued on September 15, 2017 by HTL, the date of announcement of first offer is June 29, 2017 and the books of accounts of the Company showing a balance of advance against issue of shares of Rs.208.808 million as on December 31, 2016. This indicates that advance payment of Rs. 208.808 million was made six months before the date of offer which was June 29, 2017.
 - (ii) HTL's second date of announcement of offer was August 24, 2017 in respect of 89.999 million shares allotted on December 07, 2017 and the books of accounts of the Company showing balance of advance against issue of shares of Rs. 401.908 million as on June 30, 2017. This indicates that increase in advance payment of Rs.193.100 million (Rs.401.908 million minus Rs.208.808 million) was prior to June 30, 2017 which is before the date of announcement of offer i.e. August 24, 2017.



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(iii) In the matter of 25 million shares issued on April 28, 2020 by HTL, the date of offer is February 17, 2019 and the books of accounts of the Company showing a balance of Rs.40 million as on December 31, 2018. It transpires that for the amount of Rs. 40 million outstanding as on December 31, 2018, 25 million shares of HTL were issued on April 28, 2020 i.e. after 13 months of due date. In view of the foregoing, I hereby conclude that the respective Respondents has violated the provisions of Section 199(2) of the Act by not charging any interest on amount of advance against purchase of shares, amounting to Rs. 40 million, against which shares were issued on April 28, 2020 i.e. after 13 months from the due date.

- For the non-compliance with the provision of regulation 4(2) of the Regulation i.e. for not disclosing implementation status of the decision of the shareholders for investments to be made in HTL; the Company submitted that it did not intend to hide anything from its shareholders and the approvals for investments in HTL were duly taken in the AGM of 2017. It was also stated that the Company in its meeting held on February 19, 2020 discussed the matter of advance equity to HTL as well. It may be noted that the investments of upto Rs. 500 million to be made in HTL were approved in general meetings of 2016 and 2017 of the Company, however, neither the entire authorized amount was invested, nor shares were issued till the year 2020.

In this regard, I am of the view that complete disclosures as required in terms of regulation 4(2) of the Regulations were not made before the shareholders at the time of discussion of investments status in AGM of 2020. In terms of regulation 4(2) of the Regulations, in case any decision to make investment under the authority of a resolution passed pursuant to provisions of Section 199 of the Act is not fully implemented in line with the approval of members till the holding of subsequent general meeting, the status of the decision shall be explained to the members through a statement having the following details namely,- (a) total investment approved; (b) amount of investment made to date; (c) reasons for deviations from the approved timeline of investment, where investment decision was to be implemented in specified time; and (d) material change in financial statements of associated company or associated undertaking since date of the resolution passed for approval of investment. However, the Company in its statements of material facts annexed with the notices of general meetings held during the year 2018 (AGM held through notice dated April 5, 2018 and EOGM held as per notice dated September 18, 2018) and in the year 2019 (AGM held as per notice dated April 8, 2019) did not disclose implementation status of decision of investments along with required disclosures for the authorized amount of investment of Rs. 500 million to be made in HTL, hence, violation of regulation 4(2) of the Regulations is attracted.



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C. Investments in VAS LNG (Pvt.) Limited:

In case of investments in VAS, it was noted that the approval of shareholders in the general meeting was obtained in the AGM held on April 28, 2017 for an equity investment of Rs.300 million in VAS. The approval, however, was not renewed subsequently, therefore in terms of regulation 6 of the Regulations, the said approval stands lapsed after twelve months. Moreover, the investment of Rs.1 million made by the Company is in terms of advance and not an equity investment and is therefore made, *prima facie*, in contravention of Section 199(1) of the Act. In this regard, the Company through reply dated September 26, 2022 stated that the Company held 30% shares of VAS of the amount of Rs. 3 million. Moreover, it was stated that VAS filed liquidation in the month of October 2020 and the Company was not expecting recoverability of its investments.

In this regard, I am of the view that the Respondents have not denied that the investment in VAS was made in term of advance and not as on equity investment for which proper authorization of members was not accordingly sought. As per available information, an amount of Rs. 1.023 million was advanced in the year 2017 to VAS against issue of shares and such advance was outstanding till the year 2020. As per stance of the Company, the shares against the said advance were issued after the close of FY 2020. Hence, the amount of investment made in VAS was in the nature of advance till the year 2020. As per available information, the approval of members for an equity investment of Rs. 300 million which was obtained in the AGM of April 28, 2017 was lapsed after twelve months. Keeping in view, the investment made in VAS was not an equity investment and the Company was not authorized to make advance to VAS, hence, such investment was made in violation of Section 199(1) of the Act.

D. Stay order issued in the matter of Show Cause Notice for serious fraud investigation under Section 258 of the Act:

The Respondent Company is of the view that the SCN is not maintainable under the law as it has admittedly been issued on the basis of the Investigation Report which itself states that further investigation is required. The Respondent Company informed that against the Commission's order dated January 19, 2022 under Section 258 of the Act, the honorable High Court of Sindh through order dated April 27, 2022 has pleased to suspend the aforesaid order of the Commission. Hence, the Honorable Court has restrained the Commission from its pursuit of the roving investigation under Section 258 of the Act. In this regard, I am of the view that the Respondent has not provided any order issued by any Court of law which restrains the instant proceedings initiated through the SCN which is based on the examinations of Accounts 2019 and the Investigation Report as stated above. Further, I am of the considered view that the instant proceedings initiated through the SCN are separate and independent from the forensic investigation (serious fraud investigation) as the matters mainly pertain to financial years 2017, 2018 and 2019 respectively. Hence, the aforesaid contention of the Respondent is not tenable.



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E. Obligations of the Respondents to comply with the legal provisions:

The Respondents namely Abdul Aziz Khalid, Mr. Paul Anthony Himsworth, Mr. Farid Arshad Masood are of the view that the investments made in associated companies were discussed in the board meetings which were attended by them. Moreover, Mr. Najumus Saquib Hameed and Mr. Farooq Rahmtullah during the hearing proceedings also contended that the decision to make investments in associated companies were never brought to the knowledge of the board. In this regard, I am of the view that it was the responsibility of the Respondents to ensure compliance of the requirements of the Act and of the Regulations and any ignorance in this regard is not acceptable. Moreover, it was the obligation of the Respondents while approving relevant interim and annual financial statements that the compliance of the given requirements of the Section 199 of the Act and of the Regulations were ensured during the period of pendency of the said investments in associated companies. The Respondent's claim to seek immunity in terms of Section 181 of the Act is not acceptable as they did not substantiate to act diligently in the matter of instant violations. Moreover, the Respondents were acting as directors, hence, cannot be exonerated on the ground that during the period of their directorship, as stated above, any such information/approval was not brought before the board with regard to investments in associated companies as stated above.

It is reiterated here that the appointment of independent director is of utmost importance because they act as a guide for the business, improving the corporate governance standards, quality of the process, credibility and accountability towards stakeholders. Thus independent director plays pivotal role in the listed companies. Being independent director on the board during the decision-making process, these independent directors exercise their expertise, experience, skill, and knowledge to handle any situation, for compliance with the regulatory and financial framework in letter and spirit. This is important so that all stakeholders are satisfied with the company's performance and can retain their faith which is the foundation of the entity's growth and expansion. Independent director must provide an unbiased judgment regarding important corporate finance decisions. They should always keep shareholders' benefits in mind while making decisions.

F. Proceedings under Section 96 of the Securities Act, 2015 and Section 159 thereof.

The Respondent during the hearing proceedings contended that the Commission had already investigated the matter of transfer of assets to HLPL and loss from discontinued operations vide its Show Cause Notice dated 18 April 2022 issued under Section 159 of the Securities Act, 2015. HPL had already in detail replied the show cause notice dated 18 April 2022 and the Commission vide its Order dated 13 July 2022 issued by Director/HOD (Adjudication Department-I) concluded the proceedings initiated without imposing any monetary penalty and any other adverse order. In this regard, I would mention here that the Commission passed an order dated July 13, 2022 in the matter of the Company u/s 96 of the Securities Act, 2015 read with Section 159 thereof. In terms of the aforesaid Order, the board of directors of the Company in meeting held August 29, 2019 decided to discontinue the lubricant business and decided to



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transfer it to HPL. By not disclosing the price sensitive material information in a requisite manner with regard to transfer of the lubricant business, the Company violated the requirements of Section 96 of the Act read with Section 159 of the Securities Act, 2015. Keeping in view the submissions of the Company that transfer of lubricant business to HPL did not fall under the price sensitive information and necessary disclosures in this regard were made in relevant financial statements, the proceedings were decided without any monetary penalty. However, in this regard, I am of the view that the instant proceedings not only entail investments in HPL but HTL and VAS as well and are independent of the proceedings initiated against the Company u/s 159 of the Securities Act, 2015. Moreover, the applicability of the legal provisions of the Act and of the Regulations make the instant proceedings as distinguished from the order passed u/s 159 of the Securities Act, 2015. Hence, the stance of the Respondent Company that an action in this regard has already been taken does not hold ground as legal requirements of Section 159 of the Securities Act, 2015 are entirely different viz a viz legal requirements of Section 199 of the Act read with the Regulations.

G. Doctrine of Laches is irrelevant in the instant matter:

The Respondent Company's stance that the matters highlighted in the instant SCN dates to financial statements of the Company in 2017 and relevant record is not available and relied on doctrine of laches. In this regard, I would like to mention here that Laches is a doctrine where under a party which may have a right, which was otherwise enforceable, loses such right to the extent of its enforcement, if it is found by the court of a law that its case is hit by the doctrine of laches/limitation. Right remains with the party, but he cannot enforce it. In this instant case, the Commission carried out the examination of annual audited financial statement of the company for the year ended December 31, 2019 vis a vis in pursuance of investigation order dated July 8, 2021 and supplementary investigation order dated August 27, 2021 under Section 257 of the Act to conduct investigation into all aspects of the Company and after scrutiny of all the records and books of accounts, books and papers, Inspectors have submitted the Investigation Report dated January 12, 2022. Hence I am of the view that the Commission initiated the instant proceedings in accordance with the provisions of the applicable regulatory framework including the Act; hence the said stance of the Respondent Company is not cogent and not acceptable.

21. From the above discussion and after careful consideration of all the facts of the case, I am of the view that provisions of Section 199 of the Act read with the Regulations, as stated above, have been contravened and for this contravention, the Respondents, as stated, are liable under sub-section (6) of the Section 199 and Section 479 of the Act read with regulation 8 of the Regulations. In exercise of the powers conferred under the said provision, I hereby impose an aggregate penalty of **Rs. 2,000,000/- (Rupees Two Million only)** on the Respondent i.e. **Hascol Petroleum Limited** for the aforesaid contraventions. Moreover, the Respondent directors, are, hereby, warned to ensure compliance of the legal provisions in letter and spirit.

22. The aforementioned penalties must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the Securities and Exchange Commission of Pakistan within



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recovery of the same as arrears of land revenue will be initiated. Moreover, the Respondents are liable to pay penalties from their personal resources.

23. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act/ the Regulations providing for imposition of penalties on Respondent in respect of any default, omission or violation thereof.

Shahzad Afzal Khan
Head of the Department
Adjudication Department-I

Announced: June 27, 2023
Islamabad

SECURITIES & EXCHANGE COMMISSION

Washington, D.C. 20549



Form 10-K
Annual Report of the Registrant

10-K
Annual Report of the Registrant