Securities and Exchange Commission of Pakistan

SECP

BEFORE APPELLATE BENCH I

In the matter of

Appeal No. 03 of 2013

D.J.M Securities (Pvt.) Ltd ....Appellant

Versus

Director (Securities Marketing Division), Securities and Exchange Commission of Pakistan ..... Respondent

Date of Hearing 08/01/15

Present:

Appellant:

1. Mr. Dawood Jan Mohammad, CEO D.J.M Securities (Pvt.) Ltd

Respondent:

1. Mr. Mirza Shoaib Baig, Deputy Director (SMD)
2. Tayyaba Nisar, Assistant Director (SMD)

1. This order is in appeal No. 03 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order (the "Impugned Order") dated 05/12/12 passed by the Respondent.

2. Brief facts of the case are that D.J.M Securities (Pvt.) Ltd (the "Company") is registered with the Commission as a broker, under the Broker and Agents Registration Rules, 2001 (the "Rules"). The Company in its proprietary account, during 27/08/12 to 04/09/12, traded 87,200 shares wherein it bought and sold 43,600 shares of Philip Morris (Pakistan)

Limited ("PMPK"). The analysis of trade data revealed that the Company executed 32 trades in its proprietary account out of which 25 trades matched with Zillion Capital Securities (Pvt) Limited ("ZCS"). The Company's proprietary account consisted of 60% total market volume in the script of PMPK during four days period. The analysis of order level data showed that the buy and sell orders by the Company and ZCS were placed at the same time and in such manner as to ensure that these orders matched with each other. During the aforementioned period, volatility in the share price was witnessed, which ranged between Rs. 138.50 to Rs. 157.95.

3. Show Cause Notice ("SCN") dated 24/09/12 under Section 22 of the Securities and Exchange Ordinance, 1969 (the "Ordinance"), was issued to the Company for breach of clause A (2), A (4) and A (5) of the Code of Conduct set forth under the Third Schedule of the Rules. On 12/11/12, the Company was provided a hearing opportunity and Mr. Yaqoob Jan Muhammad, Director of the Company, appeared on behalf of the Respondent. The Director of the Company while admitting to the Company's failure to exercise due skill and care prayed that the Commission may take a lenient view in this matter and drop the proceedings.

4. The Respondent dissatisfied with the response of the Appellant held that the assertion of the Appellant that trading in the scrip of PMPK was executed by its KATS operator and overlooked by the Appellant because Mr. Yaqoob Jan Muhammad ("Director") was abroad may not hold true. It is pertinent to note that the Proprietary Account of the Appellant is an exclusive account which is used for its own trading, but in this particular case, the same was operated by an inexperienced and new KATS operator. Further, the trades in question were executed in the Proprietary Account of the Appellant for four working days and the Appellant did not take any notice of the same. The aforementioned clearly shows the weaknesses in the Respondent's internal records and procedures and its relaxed and casual attitude regarding the compliance and conformity towards the applicable rules and regulations. The Respondent, in exercise of the powers under the provisions of Section 22, of the Ordinance, imposed a penalty of Rs. 200,000/- on the

Company. Furthermore, they were advised to take immediate measures and put in place proper system and checks to eliminate the occurrence of such instances in future.

5. The Appellant have preferred the appeal against the Impugned Order. The Appellant's representative argued that:

(a) it is a well-known fact that when a broker buys scrip's of a particular company through its KATS Terminal, he can never ensure or foresee from which CDC account will the offer to purchase be settled from nor can it be ensured who will buy the scrip's the broker puts up for sale. In such circumstances when the Appellant placed his bid to buy on the system, it could have been settled by any scrip holder of PMPL and, therefore, it was only a matter of coincidence that the same was sold by ZCS. Additionally when the Appellant sold his shares on the system it was equally impossible for him to foresee who will buy the shares from him on the system. Such trading by the Appellant, therefore, was in the normal course of its business and was void of any other intention but to make a fair profit; and

b) the trading of the Appellant in the scrip of PMPK did not create any anomaly in the trading history for PMPK. The Respondent's observation that the Appellant's trade in the scrip of PMPK consisted of 60% of the total trading in PMPK during four particular days in question is exaggerated. The total percentage of the Appellant in the total scrip trading of PMPK constitutes only 30% of the total trade during the period. As such this is clearly attributable to the fluctuating interest of the investors in the scrip of PMPK and has nothing to do with the Appellant. On 28/06/12, a total of 47,093 shares of PMPK were traded on the exchange, this period is outside the period in question. Additionally on 04/07/12, a total of 24,666 shares of PMPK were traded on the stock exchange. This trend is prima facie visible in the historical record of trading in the scrip of PMPK. The share price of the scrip of PMPK has also greatly varied even outside the period in question. As a matter of example, the share price of 1 share of PMPK dropped from Rs. 185.01 to Rs. 175.76 in one single day between

27/06/12 and 28/06/12 and within a span of ten days i.e. from 27/06/12 to 06/07/12, the per share price of PMPK dropped from Rs. 185.01 to Rs. 145.44 which was a drop of almost forty rupees in ten days. That conversely during the period of 07/08/12 to 15/08/12, per share price of PMPK increased from Rs. 135.03 to Rs. 150.5 which is an increase of almost fifteen rupees in one week. It can, therefore, be concluded from a bare perusal of the trade history of PMPK shares that the patterns visible in the trades of the Appellant for period in question is not anything out of the ordinary for PMPK scrip's and the trading of the Appellant is well within the normal parameters.

6. The department's representative argued that:

   a) the analysis of trading data of the Appellant in the scrip of PMPK showed that out of 87,200 shares traded by the Appellant during the Period 72,400 shares matched with ZCS which constituted 83% of total volume traded by the Appellant. It is pertinent to mention that the Appellant in coordination with ZCS traded in the scrip in such a manner that share price moved upward or downward swiftly in a very short span of time. Moreover, the Appellant and ZCS traded in such a way that their positions were squared at the day end and beneficial ownership of shares was not changed. There was a specific purpose and reason for such trading by the Appellant and ZCS and the same was admitted by the Appellant; and

   b) the trading in Proprietary Account by the Appellant consisted of 60% of the total market volume in the scrip of PMPK during four day Period. The analysis of order level showed that buy and sell orders by the Appellant and ZCS played at the same time and in such a manner to ensure that these match with each other. The Appellant earned a profit of Rs. 400,000 from the trading of PMPK during the Period. Furthermore, the Appellant's KATS operator and ZCS KATS operator were friends and they mutually executed these transactions for exchange of some material benefit.

7. We have reviewed the arguments. Section 22 of the Securities and Exchange Ordinance, 1969, Clauses A(2), A(4) and A(5) of the Third Schedule of the Brokers and Agents Registration Rules, 2001 are reproduced for ease of reference:

*22. **Penalty for certain refusal or failure**. -(1) If any person-*
(a) refuses or fails to furnish any document, paper or information which he is required to furnish by or under this Ordinance; or

(b) refuses or fails to comply with any order or direction of the [Commission] made or issued under this Ordinance; or

(c) contravenes or otherwise fails to comply with the provisions of this Ordinance or any rules or regulations made thereunder;

the [Commission] may, if it is satisfied after giving the person an opportunity of being heard that the refusal, failure or contravention was willful, by order direct that such person shall pay to the [Commission] by way of penalty such sum not exceeding [fifty million] rupees as may be specified in the order and, in the case of a continuing default, a further sum calculated at the rate of [two hundred] thousand rupees for every day after the issue of such order during which the refusal, failure or contravention continues.

Clauses A(2), A(4) and A(5) of the Third Schedule of the Brokers and Agents Registration Rules, 2001

A. General

2. Exercise of due skill and care - A broker shall act with due skill, care and diligence in the conduct of all his business.

4. Malpractices - A broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors' interest or which leads to interference with the fair and smooth functioning of the market. A broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

5. Compliance with statutory requirements - A broker shall abide by all the provisions of the Act and the rules, regulations issued by the Commission and the stock exchange from time to time as may be applicable to him.

a) the Appellant has asserted that it was only a matter of coincidence that the scrip was sold by ZCS. Moreover, it was equally impossible for the Appellant to foresee who will buy the shares from him on the system. Such trading by the Appellant, therefore, was in the normal course of its business. The Respondent has argued that during the Period 72,400 shares matched with ZCS which constituted 83% of total volume traded by the Appellant. We are of the view, that the evidence is only circumstantial and does not go far to show that the Appellant engaged in any mal practice and violated Clauses A(2), A(4) and A(5) of the Third Schedule of the Broker Rules; and

b) the Appellant has argued that the total percentage of the Appellant in the total scrip trading of PMPK constitutes only 30% of the total trade during the period. The Respondent has argued that the scrip trading of PMPK constituted 60% of the total trade. The Appellant's KATS operator and ZCS KATS operator were friends and they mutually executed these transactions for exchange of some material benefit. As stated in para 7(a) above, the evidence is neither convincing nor does it prove that the Appellant as Broker violated any of the Rules as mentioned in the SCN.

In view of the foregoing, we set aside the Impugned order with no order as to costs.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: 22 JAN 2015