



Securities and Exchange Commission of Pakistan

Securities Market Division

Through Courier

Before The Director / HOD (MSRD)

In the matter of Show Cause Notice issued to Creative Capital Securities (Pvt)
Limited under Section 22 of the Securities and Exchange Ordinance, 1969

Date of Hearing:

December 23, 2013

Present at the Hearing:

Representing Creative Capital Securities (Private) Limited

(i) Mr. M. Hanif Ashraf

Director

(ii) Mr. Muhammad Yasin Chaudhry

Independent Consultant

Assisting the Director/HOD (MSRD)

(i) Mr. Muhammad Tanveer Alam

Joint Director

(ii) Ms. Najia Ubaid

Deputy Director

ORDER

1. This Order shall dispose of the proceedings initiated through Show Cause Notice bearing No. 1(10) SMD/MSRD/C&IW/2013 dated December 4, 2013 ("SCN") served to Creative Capital Securities (Private) Limited ("**Respondent**"), Trading Right Entitlement Certificate Holder/Broker of the Karachi Stock Exchange Limited ("**KSE**") by the Securities and Exchange Commission of Pakistan ("**Commission**") under Section 22 of the Securities and Exchange Ordinance, 1969 ("**Ordinance**") read with Rule 8 of the Brokers and Agents Registration Rules, 2001 ("**Brokers Rules**").

2. Brief facts of the case are that the Commission in exercise of its powers under Sub-section (1) of Section 6 of the Ordinance read with Rule 3 and Rule 4 of the Stock Exchange Members (Inspection of Books and Record) Rules, 2001 ("**Inspection Rules**") ordered an inspection of the books and records required to be maintained by the Respondent. The following officers of the Commission were appointed as inspectors ("**Inspection Team**") for the purpose vide order dated July 24, 2013:

SECURITIES & EXCHANGE
COMMISSION OF PAKISTAN
NIC Building, 63 Jinnah Avenue,
Islamabad, Pakistan





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- a) Mr. Kashif Ali Deputy Director
b) Mr. Adnan Ahmed Deputy Director

3. The Inspection Team submitted the report ("**Inspection Report**") on September 23, 2013 which was shared with the Respondent in accordance with Rule 7 of the Inspection Rules. The response of the Respondent in the context was received vide letter dated November 11, 2013. Upon evaluation of the Inspection Report, irregularities in calculation of Net Capital Balance ("**NCB**") as on December 31, 2012 were observed and it appeared that NCB certificate was not in accordance with the Third Schedule of the Securities and Exchange Rules, 1971 ("**Rules 1971**"). Moreover, the Inspection Report further highlighted that the Respondent was involved in imposition of late payment charges to its clients.

4. In light of the Inspection Report and the comments received from the Respondent, the Commission served a SCN to the Respondent under Section 22 of the Ordinance and Rule 8 of the Brokers Rules. Hearing in the matter of aforesaid SCN was scheduled for December 18, 2013 at the Commission's Head Office in Islamabad. However, the Respondent vide letter dated December 6, 2013 requested that hearing be fixed at Karachi. Acceding to the request of the Respondent, hearing was rescheduled for December 23, 2013 at the Commission's Karachi Office.

5. The Respondent submitted its written response to the SCN vide letter dated December 13, 2013. Mr. M. Hanif Ashraf, Director of the Respondent and Mr. Muhammad Yasin Chaudhry, Independent Consultant, attended the hearing on behalf of the Respondent ("**Representatives**"). The following arguments were put forward by the Respondent in its written response and by the Representatives of the Respondent during the hearing held on December 23, 2013:

- a) **Trade Receivables:** The Respondent in its written response stated that:

"The difference of Rs. 2.178 million (trade receivable undervalued) between working performed by your team and our working in trade debtors balance shown in net capital statement has arisen due to the fact the your team has performed procedures on a sample basis, whereas in total the position is reconciled. The second reason of difference is the some reconciliation issue."





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The Representatives of the Respondent during the hearing asserted the stance taken by the Respondent in its written response.

- b) **Securities purchased for clients:** With regard to securities purchased for clients, the Respondent in its written response stated that:

"If we would take the amount securities purchased for clients, our net capital balance would further increase favorable by amount of Rs. 9,445,702/-. Therefore, we have taken a notice and in future, we would comply the observation highlighted."

The Representatives of the Respondent reiterated the above arguments during the course of hearing.

- c) **Trade Creditors and Other Liabilities :** The Respondent in the written response communicated that:

"The difference highlighted by the inspection team is Rs. 2,787,626 short in the eligible trade creditors' balance. However, the net capital certificate figure calculated by the inspection team is Rs. 18,181,305 and the net increment in the balance is Rs. 1,020,133. The difference is due to the settlement and transaction date, cutoff, classification issues and some reconciliation matter. However, in future we'll record the balance and transactions correctly and would avoid such kind of instances. In addition to the aforesaid matters, if incorporating all the adjustments as highlighted by the inspection team our net capital balance would further increase favorable by Rs. 1.016 million."

The Representatives of the Respondent reiterated the above stance and assured that the Respondent shall ensure compliance with the rules and regulations in future.

- d) **Late Payment Charges:** With reference to the imposition of late payment charges, the Respondent communicated that:

"Now we are not charging any late payment charges against our clients' overdue balance and some copies of clients' ledger are enclosed for your ready reference. Due to our preventive measure in our house, brokerage commission has been declined substantially."

Financial costs for delayed payments are permissible under Section 74 of the Contract Act, 1872, as liquidated damages. Moreover, it is also the market practice for the brokers to carry on debit balance of prestigious clients where payments are not in jeopardy. It is neither advisable, nor practicable for a broker to immediately transfer the securities in a collateral account for the purpose of disposal, especially in cases where clients are in genuine difficulties with no unclean intentions."

The Representatives of the Respondent during the hearing communicated that they have reversed the amount appearing in the financials of the Respondent reflecting





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late payment charges. They further added that they have also stopped imposing late payment charges.

- e) **Adjusting receipts from clients and treatment of proprietary investment:** In this context, the Respondent in its written response stated that:

"Management has taken a strict action against the responsible staff and properly educate the concerned and ensure the authority for non-reoccurrence in future. These types of transactions were done without any intention to mislead the accounting record, the noted transaction was not material, that would cause us to believe that the books of accounts not fairly presented."

The Representatives of the Respondent accepted that improper accounting treatment was being done. The Representatives of the Respondent further added that they have taken serious note of it and has strengthened control procedures.

- f) **Segregation of Client's assets and Collateral Account:** With regard to maintenance of separate bank account for handling of clients' assets and collateral account, the Respondent in its written response communicated that:

"In this spirit we have already opened bank account as observed by the inspection team, now separated the clients' fund in the separate bank account the copy of bank statement is attached for your ready reference. We have opened the collateral account and the copy of aforesaid account is attached for your ready reference."

The Representatives of the Respondent provided the copy of bank account titled "Creative Capital Sec P Ltd Client C" with Bank Islami Pakistan Limited as evidence of segregation of clients' assets.

- g) **Proprietary trading account:** The Respondent stated that:

"We've rectified the observation highlighted by the inspection team. The sheet of proprietary accounts is enclosed for the ready reference."

The Representatives of the Respondent communicated that they have updated the NCCPL data in respect of Mr. Nadeem Abdul Ghaffar, Director and Chief Executive Officer of the Respondent.

- h) **Risk Management:** With regard to accepting all securities as margin eligible, the Respondent in the written response communicated that:

"In respect of the margin calculation and acceptance, we follow the market practice and accept all active and trade able securities as margin 40% approx. However, in the spirit of best practice we'll follow the regulation requirement in future."





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The Representatives of the Respondent communicated that they have taken steps to ensure that only margin eligible securities are accepted as margin from their clients.

6. I have heard the arguments presented by the Representatives of the Respondent at length during the hearing. Additionally, I have perused the available record and the written reply filed by the Respondent. Accordingly, my findings on the arguments and assertions made by the Respondent to the issues raised in the SCN are as follows:

- a) The Respondent in its written response and the Representatives of the Respondent during the course of hearing accepted the fact that receipts from clients' were not properly accounted for in the books of accounts and they have now tried to implement strong control procedures to address and ensure compliance with Rule 8 of the SEC Rules.
- b) The Respondent in its written response and the Representatives of the Respondent during the course of hearing communicated that they were imposing late payment charges to its clients', however, after the observations raised by the Inspection Team in this regard, they have stopped imposing late payment charges.
- c) The Respondent and its Representatives in the written response and during the course of hearing accepted that it has been using all securities as margin irrespective of their status as margin eligible declared by the KSE. The Representatives of the Respondent communicated that now they have implemented procedures to ensure full compliance with the Risk Management Regulations of the KSE.
- d) The Representatives of the Respondent during the course of hearing provided evidence of opening of the separate bank account for clients' of the Respondent and collateral account to ensure compliance of the General Regulations of the KSE.

7. After a detailed and thorough perusal of the facts, evidence/information available on record, contentions and averments made by the Representative of the Respondent during the course of the hearing, it is evident that the Respondent failed to perform its responsibilities by not maintaining proper books of accounts and not preparing the NCB Certificate in accordance with the Rules 1971. It is pivotal for maintenance of investors' confidence that the brokers should follow the rules, regulations and procedures formulated by the Commission





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in full spirit. A broker should be perceived as professional with high integrity that is beyond reproach and it should perform its functions in a fair, proficient and impartial manner.

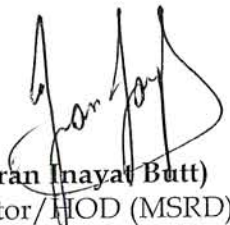
8. The violation of the Rules and Regulations is a serious matter. Taking a lenient view in the matter, in exercises of the powers under Section 22 of the Ordinance, I hereby impose on the Respondent a penalty of Rs. 25,000/- (Rupees Twenty Five Thousand Only). The Respondent is further directed to:

- a) Comply with the Rules 1971 and the guidelines issued in letter and spirit;
- b) Discontinue the practice of imposing late payment charges immediately;
- c) Maintain proper books of accounts to record for the proprietary and clients' investments;
- d) Ensure segregation of clients' assets and maintain separate bank account for the clients' funds

9. The matter is disposed of in the above manner and the Respondent is directed to deposit the fine in the account of the Commission being maintained in the designated branches of MCB Bank Limited not later than thirty (30) days from the date of this Order and furnish a copy of the deposit challan to the undersigned.

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




(Imran Inayat Butt)
Director / HOD (MSRD)

Announced on January 08, 2014
Islamabad.