



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 Ace Securities (Pvt) Limited under
Section 22 of the Securities and Exchange Ordinance, 1969

Date of Hearing:

December 23, 2013

Present at the Hearing:

Representing Ace Securities (Private) Limited

(i) Mr. Haroon Iqbal

Chief Executive Officer

(ii) Mr. Jabran A. Sattar

Assistant

(ii) Mr. Junaid Ali

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(2) SMD/MSRD/C&IW/2013 dated November 6, 2013 ("SCN") served to Ace 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

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





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following officers of the Commission were appointed as inspectors ("Inspection Team") for the purpose vide order dated January 16, 2013:

- a) Mr. Muhammad Tanweer Deputy Director
- b) Mr. Kapeel Dev Assistant Director

3. The Inspection Team submitted an interim report on March 26, 2013 communicating that Respondent has failed to provide the documents required for conducting the inspection. Accordingly an SCN dated March 27, 2013 was served to the Respondent and was disposed of vide Commission's Order dated June 4, 2013 imposing a penalty of Rs. 100,000 on non-provision of information with strict direction to cooperate and comply with the directions of the Commission. However, the Respondent failed to deposit the penalty, as was directed and neither did it file an appeal with the Commission. In light of this another SCN was served on September 6, 2013. Subsequently the Respondent deposited the penalty and the said SCN was disposed vide Order dated September 12, 2013.

4. The Inspection Team submitted its report ("Inspection Report") dated August 20, 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 September 2, 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.

5. In light of the Inspection Report and the comments received from the Respondent, the Commission served a SCN dated November 6, 2013 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.





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6. The Respondent submitted its written response to the SCN vide letter dated November 26, 2013. Mr. Haroon Iqbal, Chief Executive Officer, Mr. Jabran A. Sattar, Assistant and Mr. Junaid Ali, Consultant, attended the hearing on behalf of the Respondent ("Representatives"). The Respondent in its written response attached the comments submitted earlier by it vide letter dated August 22, 2013. 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) **Non-provision of information:** The Respondent in its written response stated that:
"We have paid the token penalty of Rs. 100,000 (One hundred thousand only). Inspection of this nature was done by SECP for the first time so we were not prepared."

The Representatives of the Respondent during the hearing asserted the stance taken by the Respondent in its written response. The Representatives of the Respondent with regard to non-provision of breakup of trade receivables and investments in listed securities communicated that they have already provided the said information vide letter dated August 5, 2013 and shall again submit the information to the Commission.

- b) **Investments in listed securities, Difference in securities in house account and trial balance:** In this context, the Respondent in its written response stated that:

"We vehemently and emphatically stated that all the investments reflected in the CDC Account owned by the company and not pertain to clients. As a matter of prudent and to maintain exposure value has been reflected on slightly lower side. This represent the amount agreed by the Auditor and taken into Net Capital Balance on the same basis being on safe side and in effect does not overstated the NCB position of the company as on June 30, 2012."

The Representatives of the Respondent during the course of hearing communicated that they have reported less value of investments than available in house account based on the account of prudence and asserted that the same stance was communicated to the auditor of the Respondent. The Representatives of the Respondent further added that in this context they will provide copy of their communication with the auditors.





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- c) **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.

- d) **Trade Creditors and Other Liabilities:** The Representatives of the Respondent assured that the Respondent shall ensure compliance with the rules and regulations in future and at present the difference in the calculation is because of aging methodology.

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

"However, as specifically mentioned in above referred letter, in respect of contravention of section 16 of the Securities and Exchange Ordinance, the term "late payment charges" is being misinterpreted as financing to the client. Section 16 in principle prohibits the members of the stock exchange to provide any kind of financial assistance to clients to facilitate them to invest in securities, where as we have explained vide our earlier letter dated September 12, 2013 that Liquidated Damages do not attract the Section 16 of the Ordinance on the basis as below.

We charge Liquidated Damages to the clients in case the clients fails to settle their account with in a prescribed period of time, in case of non-payment by client there are two options available to the broker either to sell the securities in open market at gain or loss as the case may be or hold the security for a longer period awaited to be settled by the respective client on later date.

In either case the liquidated damaged is a systematic way to recover the cost of funds which is invested in the securities purchased on behalf of the clients or to recover any expected loss to be incurred by the broker on disposal of the securities in open market to settle the account with the client on net basis as at the date of settlement we account for the net loss or gain position with respective client through an adjusting general entry. The practice is in line with the industry norms and agreed by the client through account opening form therefore should not be treated as financing to the client in contravention of Section 16 of the Ordinance unless the Commission issues a specific guidelines on the subject. "





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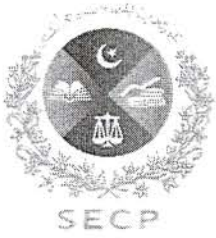
The Representatives of the Respondent during the hearing communicated that these are liquidation damages and majority of it pertains to the 2008 crisis period.

- 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 they are maintaining separate bank accounts for clients and itself. The Representatives of the Respondent communicated that they shall immediately stop making other payments from clients' bank account.

7. 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) With regard to non-provision of information, the Respondent in its written response and the Representatives of the Respondent during the course of hearing with regard to non-provision of information communicated that they have already paid the fine in this context and provided the information earlier vide letter dated August 5, 2013. In this context, I am of the view that mere payment of fine/penalty does not absolve the Respondent from complying with the directions of the Commission.
- 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; the same pertains to the crisis period. In this context, it is to note that clause 7(b) of the special terms and conditions laid down in the standardized account opening form contained in the KSE Regulations clearly provides for the mechanism for settlement of transactions in which case clients of the Respondent fails to settle.
- c) The Representatives of the Respondent during the course of hearing assured that the Respondent shall immediately stop using the clients' bank account for other purpose and shall ensure future compliance of the rules and regulations.





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d) With regard to the difference in the balance of securities available in house account of the Respondent maintained with Central Depository Company of Pakistan Limited ("CDC") and that of reported in the back office record of the Respondent, the Respondent provided copy of a letter dated September 7, 2012 from Rahman Sarfraz Rahim Iqbal Rafiq, ("**auditor of the Respondent**"), bringing attention of the Respondent towards the above referred difference. When the same was enquired from the auditor, it was confirmed by them that they accounted for lower figure based on the principal of prudence. Further, the auditor, communicated that they shall follow the guidelines issued by the Commission for calculation of NCB in future. In this context, it is important to mention that for maintenance of proper books of accounts, the actuals figures should have been accounted for by the Respondent in its books of accounts.

8. 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 imposing late payment charges and not preparing the NCB Certificate in accordance with the Rules 1971. The brokers are required to follow the rules, regulations and procedures formulated by the Commission in full spirit so as to ensure the protection of investors' interest.

9. The violation of the Rules and Regulations is a serious 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 by the Commission 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;





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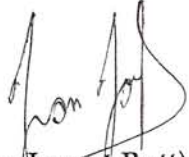
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d) Ensure segregation of clients' assets and maintain separate bank account for the clients' funds.

10. 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.

11. 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.




(Amran Inayat Butt)
Director/HOD (MSRD)

Announced on January 22, 2014
Islamabad.