



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 H.P Byramji & Co (Pvt) Limited
under Section 22 of the Securities and Exchange Ordinance, 1969

Date of Hearing:

July 10, 2014

Present at the Hearing:

Representing H.P Byramji & Co (Private) Limited

(i) *Mr. Shahveer JHP Byramji*

Director

(ii) *Mr. Muhammad Shoaib Bashir*

Manager Operations

Assisting the Director/HOD (MSRD)

(i) *Mr. Muhammad Tanveer Alam*

Joint Director

(ii) *Ms. Najia Ubaid*

Deputy Director

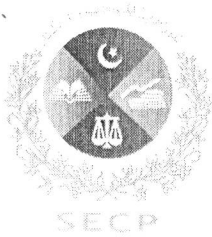
ORDER

1. This Order shall dispose of the proceedings initiated through Show Cause Notice bearing No. 1(31) SMD/MSRD/C&IW/2014 dated May 21, 2014 ("SCN") served to H.P Byramji & Co (Pvt) 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 January 31, 2014:

- a) Mr. Muhammad Tanveer Deputy Director
b) Mian Muhammad Imran Deputy Director





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3. The Inspection Team submitted the report ("**Inspection Report**") on April 04, 2014 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 April 30, 2014. The Inspection Report highlighted that the Respondent failed to maintain segregation of clients assets; failed to provide information/reconciliations required by the Inspection team; failed to provide approved Know Your Customer ("**KYC**") and Customer Due Diligence ("**CDD**") Policy; and was in violation of Circular 34 of 2009 issued by the Commission.

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 June 9, 2014 at the Commission's Head Office in Islamabad. However, the Respondent vide letter dated June 9, 2014 requested for change in the date of hearing and venue to Karachi. Acceding to the request of the Respondent, hearing was rescheduled and held on July 10, 2014.

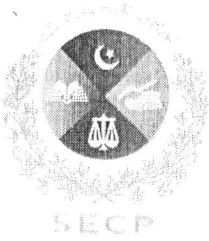
5. The Respondent in its written response to the SCN, vide letter dated May 29, 2014, submitted following arguments:

a) Segregation of Clients' Assets:

"We reiterate our earlier position stated in our response dated April 30, 2014 to the effect that HPBC only started operations as of May 8, 2013 (after operating a partnership concern for nearly 80 years). During the period May 8, 2013 to June 30, 2013 (i.e., seven weeks) there was a palpable amount of flux during the transition due to the Demutualization requirements. At the time of commencement of operations of HPBC as a limited company, in May 2013, HPBC's Directors/Shareholders had deposited Rs. 55 million in cash as part of the paid-Up Capital. The Term Deposit Receipts ("TDR") of Rs16 million were purchased from these HPBC's own, funds and there has been no usage of "Clients' Funds" at all. The clients' funds are now clearly segregated in the separate Clients' account; and there is no co-mingling.

In support of the forgoing, we are enclosing for your ready reference, Bank statement for HPBC's Account number 12678509 maintained with NIB Bank in which the shareholders' capital was deposited. HPBC has a paid-up capital of Rs. 70,000,000/- of which Rs. 55,000,000/- was paid in cash by the shareholders of HPBC (as mentioned above), and further shares of Rs 15,000,000/- were issued to undersigned in consideration of the TRE Certificate transferred from his personal name to the name of HPBC. Capital was deposited as under:





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On 25 April 2013	Rs.	3,500,000
On 8 May 2013		20,000,000
On 15 May 2013		17,500,000
On 28 May 2013		14,000,000
		<hr/>
Total	Rs.	55,000,000

From the above funds, the Rs 16,000,000/- was placed on Deposit with NIB Bank as Security for the Bank Guarantee issued by NIB Bank in favor of KSE. The relevant Bank Statement are enclosed as "Annexure A". Whilst it is true that initially clients' funds and HPBC's Funds were co-mingled (for a brief period, which has since been rectified); it is certainly not correct that clients' funds was used for HPBC's business operations.

Similarly, the commission earned on sale and purchase of securities is received in the clients' account by way of funds received from clients and clearing house cheques from KSE; and at the end of each month, the commission earned is transferred from clients' Account to HPBC's Proprietary Account. Please find enclosed the relevant Bank Statement of HPBC's proprietary Account marked as "Annexure B" showing the gross commission for each month being transferred from the client account to the proprietary account."

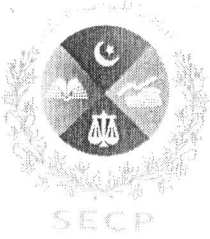
b) Non-provision of information/ reconciliation to the inspection team:

"We apologize for our mis-understanding in this regard. Since this was not highlighted as matters of non-compliance, HPBC did not address them in it's initial reply. We hereby clarify the matters as under;

i). Reconciliation/clarification of Accrued Expenses. As per the balance sheet, the amount of RS. 2,847,621 is the combined total of both accruals and payables (Please see "Annexure C 1" enclosed). The simple fact that in Note 6 it should have read Accruals and Payables"; not only "Accruals" (Please see "Annexure C2" enclosed). We regret the error and inconvenience caused as a result thereof. The breakdown of Rs. 2,847,621/- is as under:

Accruals:	Rs.	135,617	
CDC Charges		33,387	
KSE Fees		40,000	
KESC		15,161	
Petrol		48,433	
Other-est.		110,000	382,598
		<hr/>	
Payables:			
Commission	Rs.	2,000,000	
Sindh Sales Tax		1,158,106	
CDC NCCPL Charges		(693,083)	2,465,023
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Total			2,847,621



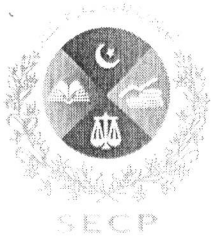


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- ii). *Commission income is shown net of Commission paid and payables. Total Gross Commission for the year was Rs. 15,863,502/-, from this Rs. 12,958,000/- was paid as commission, leaving net Commission of Rs. 2,905,502/-. Commission during the period was unusually and inordinately high, primarily because, as you may be aware, Unilever Pakistan Limited announced a buy-back Programme of their shares at Rs. 15,000/- per share. As the price offered was extremely attractive, investors sold their shares resulting in a large windfall capital gain for them and unusually high turnover for HPBC. Commission paid was duly approved and authorized by the Directors."*
- c) **KYC & CDD Policy :**
*"As we had stated in our earlier response, we reiterate that: HPBC is personally operated by the owners/shareholders and all clients are either personally known to the directors and senior management or referred by existing clients. No new clients are actively solicited. HPBC had then confirmed it was formulating its KYC and CDD Policy and to implement the same in due course for all future clients.
HPBC's KYC/CDD Policy has now been formulated. We enclosed herewith newly formulated KYC Form (marked as "Annexure D"), which is now being implemented."*
- d) **Classification of employees and directors in UIN database:**
"Please note that registration has been done; and we enclose herewith National Clearing Company of Pakistan Limited (NCCPL) UIN Post Report showing the names (highlighted) of the individuals as duly registered that were mentioned in the Inspection Team's Report. The UIN Post Report is marked as "Annexure E."
- e) **Letter of Authority not in conformity with SAOF:**
"Whilst even previously this was at the discretion of the client; now as per the SECP's criticism of this practice it has been ceased. A New Letter of Authority has been drafted and the authorization, if any given by the Client, will be to an individual who is not an employee of HPBC. Revised format of Letter of Authority is enclosed herewith and marked as "Annexure F."
- f) **Certification of new employee as per Commission's Circular 34 of 2009:**
"The Inspection Team's finding as per item 9.3 of their report states that Mr. Mohammad Salman, KATS Operator was only an Intermediate Pass and not a Graduate and hence in violation of Clause 3 (f) of Members Agents & Traders (Eligibility Standard) Rules 2001 (the Rules). These Rules define the eligibility criteria for an Agent. Mr. Salman is not an Agent."





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nor a Trader. He is merely a Kats operator, i.e., a computer operator, and hence this Rule is not applicable to him.

Furthermore, even Circular 34 is not applicable to Mr. Salman. Circular 34 of 2009 issued by the SECP requires new professional (emphasis added) entrants to the Capital market to attain relevant certification within one year.

The relevant section of circular 34 defines Professional as:

".... i.e Undertaking the function of Brokerage, Trading, Sales Agents and Professionals providing buying/selling investment advice to clients....."

Mr. Salman is not involved in any of these activities, and as stated before, is merely a KATS operator, i.e., a computer operator; and moreover to the best of our knowledge there is no certification course by the Institute of Capital Markets (ICM) for this function.

However, as regards to the Inspection Team's observation in item 9.5 of their report which does pertain to compliance under Circular 34 of 2009, as clarified by HPBC in its earlier response, five of HPBC's employees already have certified from ICM and their applications for renewal have been filed.

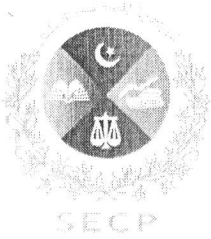
In this regard we enclose the following documents:

- i). ICM Stock Brokers Certification Programme, Member Details, (as of December 10, 2013). HPBC's employees are listed at numbers 146 to 150 and, as you will observe, have been certified since February 2011. Please see enclosed "Annexure G".*
- ii). Copies of the Membership Renewal Forms for the year 2014-15 for all five employees. Please see enclosed "Annexure H."*

6. Mr. Shahveer JHP Byramji and Mr. Muhammad Shoaib ("**Representatives**") attended the hearing on behalf of the Respondent on July 10, 2014. The arguments put forward by the Representatives during the course of hearing are summarized below:

- a) The Representatives of the Respondent with regard to segregation of clients' assets and purchase of TDRs worth Rs. 16 million on May 31, 2013 communicated that the directors of the Respondent injected an amount of Rs. 55 million which was used for the purchase of those TDRs and no clients' funds were used in the context. The Representatives further added that initially the funds of the Respondent and its clients were co-mingled but afterwards they are kept segregated. In order to substantiate





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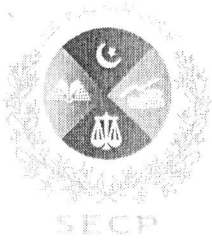
their claim of not using clients' funds for the purchase of TDRs, the Representatives of the Respondent agreed to provide reconciliation of fund position as of the date of purchase of TDRs within ten days of the date of hearing.

- b) The Representatives of the Respondent with regard to non-provision of information/reconciliation reiterated the stance taken by the Respondent in its written response. The Representatives added that their auditors had no objection on netting of the commission received from its clients and commission paid to its employees. However, the Representatives stated that the Respondent shall be careful in future.
- c) With regard to KYC and CDD Policy the Representatives asserted the stance taken by the Respondent and stated that copy of duly approved KYC and CDD Policy has now been approved and provided to the Commission along with the written response.
- d) The Representatives of the Respondent stated that they have now updated the UIN database and are now in compliance with the requirements as specified in Regulation 43(b) of the General Regulations of the KSE.
- e) The Representatives communicated that the Respondent has provided copy of the revised authority letter and further ensured that the Respondent shall not receive the authority letters in the name of the Chief Executive officer of the Respondent to avoid any conflict of interest.
- f) The Representatives during the course of hearing communicated that the employee named Mr. Salman was not actually KATS Operator, he was only computer operator and the Respondent upon identification by the inspection team has changed his designation.

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) The Respondent in its written response and the Representatives of the Respondent during the course of hearing with regard to segregation of clients' assets accepted that





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initially the clients' funds and the funds of the Respondent were comingled. The Respondent vide letter dated July 14, 2014 provided explanation as to the purchase of TDRs from its own funds, however, the Respondent did not provide the requisite reconciliation as was agreed during the course of hearing. Upon telephonic query the Respondent vide email dated July 17, 2014 provided a reconciliation of the funds and payables position as of May 31, 2013 along with its balance sheet of the same date.

- b) The reconciliation and the balance sheet provided by the Respondent are reproduced below:

<u>Reconciliation of Clients' Account as of May 31, 2013</u>	<u>Rupees</u>	
Net Payable:		
Due to Clients	409,623,281	
Due from Clients	(44,629,049)	
Total Net Payable	364,994,232	
Cash Available:		
In Clients' Account with NIB DHA Branch	356,104,479	
In Khazana Account with NIB KSE Branch	100,712	
With KSE (in Exposure Account)	51,628,899	
Total Cash Available	407,834,090	
Excess of Cash over Net Liabilities	42,839,858	(Note 1)
<i>Note 1: Represents HPBCs Net Cash Capital and Profits</i>		

Balance Sheet as of May 31, 2013

EQUITY AND LIABILITIES

SHARE CAPITAL AND RESERVES

Issued, Subscribed & Paid-Up Capital

70,000,000

Accumulated profit

7,915,632

77,915,632

CURRENT LIABILITIES

Due to Clients

409,623,281

Other

1,285,297

410,908,578

488,824,210

ASSETS

NON-CURRENT ASSETS

Property and equipment

1,992,640

Intangible Asset (TREC Certificate)

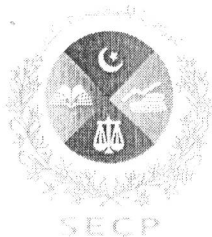
15,000,000

Deposits

302,500

17,295,140





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LONG TERM DEPOSIT	16,000,000
CURRENT ASSETS	
Trade debts	44,629,049
Other Receivables	68,258
Funds with KSE Exposure Account	51,628,899
Cash and Bank Balances	359,202,864
	455,529,070
	488,824,210

c) In order to have accurate position of clients' funds, the information provided by the Respondent was examined and analysed from two aspects, (i) from the payables position of the Respondent as of May 31, 2013 and funds available in the bank account tagged as clients' account; and (ii) from funded status of receivables and other assets of the Respondent of the same date. The analysis of information provided by the Respondent is summarized below:

Reconciliation as of May 31, 2013

Rupees

(i) On the basis of Funds available in Clients' Bank Account

Balance in Clients' Bank Account	356,104,479
Funds with KSE Exposure Account	51,628,899
	407,733,378
Due to clients (payables)	409,623,281
Difference-clients' funds used by the Respondent	1,889,903

(ii) Funded status of receivables and other assets

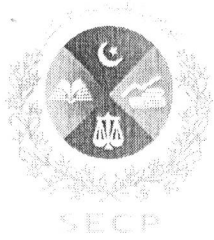
Balance with bank other than client	3,098,385
Trade debts	44,629,049
Other Receivables	68,258
Property and equipment	1,992,640
Intangible Asset (TREC Certificate)	15,000,000
Long Term Deposit	16,000,000
Deposits	302,500
Total Assets of the Respondent	81,090,832

Funded by:

Issued, Subscribed & Paid-Up Capital	70,000,000
Accumulated profit	7,915,632
Other	1,285,297
	79,200,929

Difference-clients' funds used by the Respondent	1,889,903
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From the above, it is evident that purchase of TDRs worth Rs. 16 million by the Respondent as of May 31, 2013 was not solely from its own funds. Because of comingling of clients' funds with its own funds, an amount of Rs. 1.89 million approximately of the clients' funds was used by the Respondent, prima facie, in violation of the requirements specified in the General Regulations of the KSE regarding segregation of clients' assets.

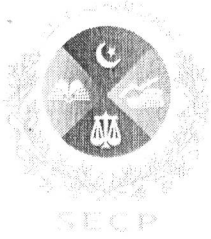
- d) The Respondent in the context of netting off commission income with commission expense stated that in future due care will be exercised and the expense and the income should have been reported and recorded separately to depict true and fair view of the state of Respondent's affairs.
- e) The Respondent along with its written response provided copy of the KYC and CDD Policy duly approved by the Board of Directors and copy of the updated authority letter in conformity with the regulatory requirements.

8. After a detailed and thorough perusal of the facts, evidence/information available on record, contentions and averments made by the Representatives of the Respondent during the course of the hearing, it is evident that the Respondent failed to perform its responsibilities by not maintaining segregation of clients' assets.

9. The violation of the Rules and Regulations is a serious matter. However, the Representative during the course of hearing and the Respondent in its written response communicated that it is now maintaining segregation of client's assets in letter and spirit. Moreover, the Respondent rectified the identified irregularities highlighted in the inspection report and communicated that it is now compliant with the applicable regulatory framework. Therefore, taking a lenient view, in exercise 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; and
- b) Ensure segregation of clients' assets in letter and spirit.





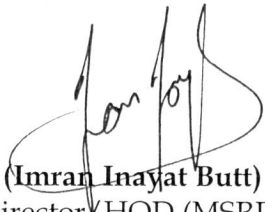
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10. The matter is disposed of in the above manner and the Respondent is directed to deposit the fine in the account of the Commission being maintained in the designated branches of MCB Bank Limited not later than thirty (30) days from the date of this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




(Imran Inayat Butt)
Director/HOD (MSRD)

Announced on August 04, 2014
Islamabad.