



# Securities and Exchange Commission of Pakistan

Securities Market Division

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Through Courier

Before The Director / HOD (MSRD)

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

*Date of Hearing:*

July 10, 2014

*Present at the Hearing:*

*Representing FDM Capital Securities (Private) Limited*

(i) Mr. Tufail Ahmed Kodvavi

Chief Operating Officer

*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(29) SMD/MSRD/C&IW/2014 dated May 23, 2014 ("SCN") served to FDM 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 January 30, 2014:

a) Mr. Kashif Ali

Deputy Director

b) Mr. Adnan Ahmed

Deputy Director

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





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3. The Inspection Team submitted the report ("**Inspection Report**") on April 2, 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 May 2, 2014. The Inspection Report highlighted that the Respondent failed to maintain segregation of clients' assets; did not have collateral account; did not have Know Your Customer ("**KYC**") and Customer Due Diligence ("**CDD**") Policy duly approved by its board of directors; and 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 June 10, 2014 at the Commission's Head Office in Islamabad. However, the Respondent vide letter dated June 9, 2014, because of critical situation at the Karachi airport, requested for change in date of hearing. Acceding to the request of the Respondent, hearing date was rescheduled to July 10, 2014.

5. The arguments submitted by the Respondent in its written response to the SCN, vide letter dated June 10, 2014, are reproduced as under:

a) **Late payment charges:**

*"It was mistakenly charged and booked by House was reversed after identification by SECP team and it is pertained to mention here that FDM does not deals in in house badla or this kind of any transaction."*

b) **Segregation of Clients' assets:**

*"We were open an Account with Habib Metropolitan Bank Stock Exchange Branch with the Title of "FDM Capital Securities (Pvt.) Limited - Client Account" with Account No.20311-714-136181 and as per point out by SECP team, we maintain this account for only client's funds."*

c) **Collateral account:**

*"After the inspection by SECP Team, we were opened an account of collateral Account by CDC under the participant Account and fulfill the Regulation 41 (1) (c) of KSE Regulation. Copy of Collateral Account Setup Report is enclosed."*





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d) **KYC & CDD Policy :**

*"After the point out by SECP Team, we are approved the policy of KYC by the Board of Director and attached with Account Opening Form. Copy attached of KYC Form for your review."*

6. Mr. Tufail Ahmed Kodvavi, Chief Operating Officer of the Respondent attended the hearing on July 10, 2014 on behalf of the Respondent ("**Representative**"). The Representative of the Respondent during the course of hearing communicated that:

- a) The Respondent has now stopped imposing late payment charges and has also reversed the markup already charged in this context. The Representative agreed to provide copies of ledger accounts of the Respondents' clients. The Respondent vide letter dated July 21, 2014 provided copies of ledger accounts of three of its clients depicting a reversal entry of an amount of Rs. 255,565/- as identified in the Inspection Report.
- b) With regard to segregation of clients' assets, the Representative of the Respondent asserted the Respondents' written response and communicated that it shall provide reconciliation of the payables position and funds position in the bank account tagged as clients' account within a week of the date of hearing.
- c) The Representative added that the Respondent has included KYC and CDD requirement to the account opening form. However, upon query about the approval of KYC and CDD Policy, the Representative communicated that they shall now get the policy approved from the Respondent's Board of Directors as required under the General Regulations of the KSE ("**KSE Regulations**").

7. The Respondent vide email dated July 21, 2014 provided evidence of reversal of late payment charges in the clients' account as was identified in the Inspection Report. The email further included the bank statement depicting balance as of July 15, 2014 along with payables position as of July 15, 2014. The Respondent during the hearing agreed to provide the reconciliation of payables position along with funds available in the clients' bank account as of June 30, 2014 which it failed to provide vide above referred email. The Respondent upon telephonic queries provided the requisite information vide emails dated August 5 and August 7, 2014.





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8. The information provided by the Respondent with regard to segregation of client's assets as of June 30, 2014 is listed below:

- a) The Respondent has a receivable of Rs. 115,928,742/- ;
- b) The Respondent has a payable of Rs. 131,560,639/- ;
- c) The exposure paid to the KSE by the Respondent was Rs. 10,000,000/-;
- d) Reconciliation

KSE Exposure	Rs. 10,000,000	
Bank Al-Habib 0001986-01-7	Rs. 5,001,123	
Habib Metro 132444	Rs. 776, 929	
Client Balance	_____	<u>Rs. 15,631,997</u>
Total	Rs. 15,778,052	Rs. 15,631,997

9. I have heard the arguments presented by the Representative of the Respondent at length during the hearing. Additionally, I have perused the available record and the written reply filed by the Respondent along with information provided subsequently. 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 communicated that it has stopped imposing late payment charges and provided evidence of reversal of the same.
- b) The Respondent with regard to segregation of clients' assets initially vide email dated July 21, 2014 provided copy of bank statement of Account Number 6-1-18-20311-714-13618 with the title "FDM Capital Securities (Private) Limited Client Account" depicting a balance of Rs. 5,000 only as of June 30, 2014. Subsequently, in an attempt to reconcile the payables position with that of funds available in the bank account tagged as clients' account, the Respondent provided reconciliation as referred to in para 8(d) above. The Respondent in the reconciliation communicated that it has an amount of Rs. 15 million approximately available in different bank accounts and with KSE in the form of exposure. From the above, it is evident that the funds deposited by the clients' to the Respondent were being used by the Respondent to either finance its receivables or for its own use. The Respondent in its written response dated June 10, 2014 communicated that it has opened bank account with Habib Metropolitan Bank





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account no. 20311-714-136181 and tagged the same for handling clients' funds only. The Respondent further asserted that it has started maintaining segregation of client's funds. However, the referred bank account depicted only an amount of Rs. 5,000 in comparison to payable position of Rs. 131.560 million as of June 30, 2014, almost 20 days after the date of written response of the Respondent. Accordingly the Respondent's stance, that it is strictly maintaining segregation of clients' assets is not substantiated by the documentary evidence.

- c) The Respondent agreed to get its KYC and CDD Policy approved from its Board of Directors.
- d) The Respondent asserted that it shall ensure compliance with the applicable regulatory framework in the future.

10. 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.

11. Segregation of clients' assets is of essence to strengthen investors' confidence and to avoid misuse of clients' assets by the brokers and probable default of the brokerage houses. The Respondent being custodian of clients' assets is expected to perform its business with due diligence. The Commission, in order to ensure investor protection, has drafted a set of rules and regulations which the Respondent is expected to comply with.

12. 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 exercises of the powers under Section 22 of the Ordinance, I hereby impose on the Respondent a penalty of Rs. 50,000/- (Rupees Fifty Thousand Only). The Respondent is further directed to:





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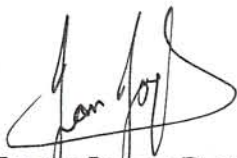
- a) Comply with the Rules 1971 and the guidelines issued in letter and spirit;
- b) Ensure segregation of clients' assets and maintain separate bank account for the clients' funds;
- c) Get the KYC and CDD Policy approved from the Board of Directors;
- d) Submit reconciliation of the bank balance as of September 30, 2014 with that of the payables position along with documentary evidence to substantiate segregation of clients' assets.

13. 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.

14. 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.

Announced on August 18, 2014  
Islamabad.



  
(Imran Inayat Butt)  
Director/HOD (MSRD)