



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
Market Supervision and Registration Department

Before the Director/HOD (MSRD)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Committee of Administration-Fauji Foundation a beneficial owner of more than ten percent equity security of Fauji Cement Company Limited

Date of Hearing

August 29, 2013

Present at Hearing:

Representing the Respondent:

*Mr. Aziz Ikram,
Deputy G.M. Finance,
Fauji Foundation*

Assisting the Director/HOD (MSRD):

*Mr. Muhammad Farooq,
Joint Director (SMD)*

Order

This order will dispose of the proceedings initiated under Section 224(4) of the Companies Ordinance, 1984 (“**Ordinance**”) by the Securities and Exchange Commission of Pakistan (“**Commission**”) through Show Cause Notice No. S.M(B.O)C.O.222/9(461)98 dated 24/07/2013 (“**Notice**”) issued to Committee of Administration-Fauji Foundation (“**Respondent**”), a beneficial owner of more than ten percent equity securities of Fauji Cement Company Limited (“**Issuer Company**”).

2. The facts of the matter leading up to aforesaid Notice are that the Issuer Company is a public listed company and the Respondent being a beneficial owner of more than ten percent of its ordinary shares was required to file returns of beneficial ownership on Form 32, within the period stipulated under Section 222 of the Ordinance. However, it failed to file Form 32 within the stipulated time period, for the changes taken place in its beneficial ownership during the period from April 2012 to November 2012 (the “**period**”), which attracts penal provisions contain in Section 224(4) of the Ordinance.

3. Section 222(2)(c) of the Ordinance stipulates the period within which the Form 32 is required to be submitted as under:-

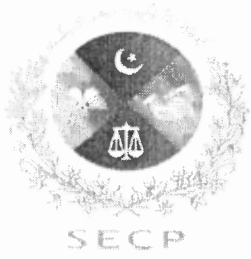
“where there is any change in the position or interest as aforesaid including a change in the beneficial ownership of any equity, security, within fifteen days of such change”.



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4. The Respondent filed a return of beneficial ownership on Form 32 with this Commission on 20/12/2012, showing therein the following changes in its beneficial ownership, with the delay as mentioned against each:-

Sr. No	Date of Transaction	Number of Shares	Nature	Extend or Delay
1	17/04/2012	6,000,000	Sale	233
2	18/04/2012	6,65,0000	Sale	232
3	19/04/2012	5,400,000	Sale	231
4	20/04/2012	25,000	Sale	230
5	23/04/2012	7,700,000	Sale	227
6	24/04/2012	4,100,000	Sale	226
7	22/05/2012	125,000	Sale	198
8	25/05/2012	1,575,000	Sale	195
9	28//05/2012	2,900,000	Sale	192
10	01/06/2012	3,100,000	Sale	188
11	01/08/2012	2,500,000	Sale	127
12	02/08/2012	675,000	Sale	126
13	13/08/2012	3,700,000	Sale	115
14	16/08/2012	3,528,000	Sale	112
15	23/08/2012	2,122,000	Sale	105
16	15/09/2012	14,900,000	Sale	82
17	02/10/2012	1,225,000	Sale	65
18	05/10/2012	8,000,000	Sale	62
19	10/10/2012	3,000,000	Sale	57
20	15/10/2012	1,420,000	Sale	52
21	18/10/2012	7,000,000	Sale	49
22	19/10/2012	4,300,000	Sale	48
23	01/11/2012	5,500,000	Sale	35
24	02/11/2012	19,500,000	Sale	34
25	06/11/2012	6,400,000	Sale	30
26	07/11/2012	53,0000	Sale	29
27	08/11/2012	1,600,000	Sale	28
28	12/11/2012	2,500,000	Sale	24
29	13/11/2012	8,000,000	Sale	23
30	14/11/2012	2,500,000	Sale	22
31	15/11/2012	3,525,000	Sale	21
32	20/11/2012	20,000,000	Sale	16
33	21/11/2012	10,700,000	Sale	15
34	22/11/2012	19,300,000	Sale	14



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35	23/11/2012	49,800,000	Sale	13
36	27/11/2012	13,955,500	Sale	9
37	28/11/2012	22,044,500	Sale	8
38	29/11/2012	9,700,000	Sale	7
39	30/11/2012	44,500,000	Sale	6

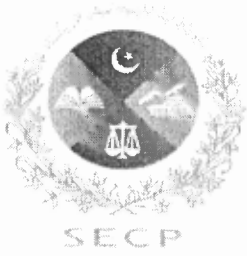
5. The aforesaid changes in beneficial ownership were reported to the Commission with delay ranges from 6 days to 233 days in contraventions of Section 222(2)(c) of the Ordinance, which *prima facie* attract penal provisions contain in Section 224(4) of the Ordinance, which provides as under:-

“Whoever knowingly and wilfully contravenes or otherwise fails to comply with any provision of section 222, section 223 or section 224 shall be liable to a fine which may extend to thirty thousand rupees and in the case of a continuing contravention, non-compliance or default to a further fine which may extend to one thousand rupees for every day after the first during which such contravention, non-compliance or default continues”.

6. The Commission took cognizance of the aforesaid default and issued Notice to the Respondent under Section 224(4) of the Ordinance, calling upon it to explain through written reply along with documentary evidence, if any as to why action may not be taken against it pursuant to Section 224(4) of the Ordinance, for aforesaid contraventions of Section 222 of the Ordinance. Mr. Aziz Ikram, Deputy General Manager Finance of the Respondent (“**Authorized Representative**”), filed written reply to the Notice vide letter dated 2/8/2013.

7. Furthermore, in order to provide an opportunity of being heard in person, hearing in the matter was fixed for 29/08/2013 at the Commission’s Head Office, Islamabad. On the said date, the Authorized Representative appeared on behalf of the Respondent. The submissions made in writing as well as verbally on behalf of the Respondent by the Authorized Representative be ummarized as under:-

- a. *Subsequently after obtaining all regulatory approval, right shares were issued @ 92% by the Issuer Company at a discounted price of Rs. 5/- per share to pay back company's borrowings. By giving consideration to the unfavorable market of cement sector none of the institutions was ready to underwrite the issue. However, the Respondent being major sponsor agreed to under write the issue.*
- b. *Due to heavy renunciation by almost 99.9% share holders, the Respondent had to purchase the shares over and above its proportionate shares as per terms of the under writing.*



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- c. *After completion of all formalities the Respondent decided to off load the shares obtained as underwriters through open market. Accordingly in April 2012 (after 9 months of purchase) the Respondent stated that selling of the said shares.*
- d. *On the completion of requisite sale of shares through brokerage house, the information u/s 222 was submitted to Commission on misunderstanding of reporting/compliance time lines as per rules.*
- e. *The Respondent being, a trust cannot enter into speculative nature of shares trading and holds the shares of listed companies as strategic investments for long term.*
- f. *The delay in reporting was not intentional and requested to condone the same.*
- g. *The Authorized Representative assured that the Respondent will comply with the requirement of Section 222 of the Ordinance within the prescribed time period in future.*

8. I have considered the submissions made on behalf of the Respondent and observed that the main plea of the Authorized Representative is that *"on the completion of requisite sale of shares the requisite return was submitted to Commission on misunderstanding of reporting/compliance time lines as per rules"*.

9. In this regard, it is pointed that the provisions of Section 222 of the Ordinance clearly describe the period for filing of returns of beneficial ownership as under:-

Section 222 (2)

The period within which the said return is to be submitted to the registrar and the Commission shall be -----

(c) where there is any change in the position or interest as aforesaid including a change in the beneficial ownership of any equity, security, within fifteen days of such change;

10. The transcript of law is very clear, which describes that the change in beneficial ownership is required to be reported within fifteen day of its occurrence. Thus, it is evident that the aforementioned argument submitted on behalf of the Respondent does not have any merit. Furthermore, the Respondent has sold 330 million shares in 39 transactions during the period from 17/04/2012 to 30/11/2012 and reported the said changes to the Commission with delay ranges from 06 days to 233 days.

11. Hence, in the light of aforesaid discussion, I am of the view that the Respondent has committed the violation. However, it has filed the return on its own motion. Taking a lenient



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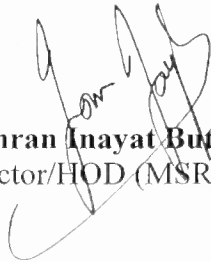
view of the default, in exercise of powers conferred under Section 224 (4) of the Ordinance, I hereby impose a fine of Rs. 25,000 (twenty five thousand rupees only) on the Respondent and no further fine for continuous default is imposed.

12. The Respondent is directed to deposit the fine in the account of the Commission being maintained in the designated branches of MCB Bank Limited, within 30 days of the date of this order and furnish Original Deposit Challan to this office.

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

Islamabad.
Announced on October 11, 2013




(Imran Inayat Butt)
Director/HOD (MSRD)