

**Before the Director (Brokers Registration & Investor Complaints Wing)
Market Supervision & Registration Department
Securities Market Division
Securities and Exchange Commission of Pakistan**

**In the matter of Show Cause Notice dated October 4, 2013 issued to
M/s. Highlink Capital (Pvt.) Limited under Section 22 of the
Securities and Exchange Ordinance, 1969**

Date of Hearing: October 24, 2013

Present at the Hearing: Authorized Representatives of M/s. Highlink Capital (Pvt.) Limited
Mr. Owais Waheed, Advocate High Court

Assisting the Director: Ms. Asima Wajid (Deputy Director (BR&ICW))

ORDER

This Order shall dispose of the proceedings initiated through a Show Cause Notice No. 4(BRL-138)SE/SMD/2006 dated October 4, 2013 (“SCN”) issued to M/s. Highlink Capital (Pvt.) Limited (“**the Respondent**”), Trading Right Entitlement Certificate (“**TREC**”) holder of the Lahore Stock Exchange Limited (“**LSE**”) under Section 22 of the Securities and Exchange Ordinance, 1969 (“**the Ordinance**”).

2. The Securities and Exchange Commission of Pakistan (“**the Commission**”) received a complaint from Mr. Muhammad Nadeem (“**the Complainant**”) regarding unauthorized trading in his account maintained with the Respondent. In this regard the Complainant and the Respondent were called for hearing on July 30, 2013 and August 5, 2013 to resolve the said complaint. The Respondent submitted the back office record pertaining to trading account of the Complainant which showed aggressive trading activity. However, as per the information ascertained from Stock Exchange trading data and CDC activity report obtained from Central Depository Company of Pakistan Limited (“**CDC**”), it was observed that no trading was made through the account of the Complainant maintained with the Respondent since opening of his account in September 2011. *Prima facie*, it appeared that the Respondent in contravention of Section 18 of the Ordinance submitted false and incorrect information to the Commission. Therefore, the subject SCN was issued, the contents of which are reproduced below:-



“Subject: SHOW CAUSE NOTICE UNDER SECTION 22 OF THE SECURITIES AND EXCHANGE ORDINANCE, 1969”

WHEREAS, M/s. Highlink Capital (Pvt.) Ltd. (“HCPL”) is a TREC Holder of the Lahore Stock Exchange Limited (“LSE”) and registered with the Securities and Exchange Commission of Pakistan (“the Commission”) as a broker under the Brokers and Agents Registration Rules, 2001 (“the Rules”) since January 15, 2007.


2. *WHEREAS, the Commission received a complaint from Mr. Muhammad Nadeem (“the Complainant”) regarding unauthorized trading in his account maintained with HCPL. In this regard HCPL and the Complainant were called for hearing on July 30, 2013 and August 5, 2013 respectively to resolve the complaint. The legal counsel of HCPL appeared before the undersigned and requested to re-fix the hearing for August 5, 2013 so that all the documentary evidences in support of his arguments could be provided to the Commission. However, on the said date no one appeared on behalf of HCPL. HCPL vide letter dated August 5, 2013 submitted copies of the following:-*

- I. *Mobile bills for the year 2013 showing the calls made to the Complainant ,*
- II. *Margin calls sent to the Complainant during the year 2012,*
- III. *SMS messages intimating the holding position of the Complainant ; and*
- IV. *Account opening form of the Complainant.*

3. *WHEREAS, the Commission vide letter dated August 6, 2013 advised HCPL to provide the ledger statements, account balance statements, copy of financial instruments i.e. payments received from and made to the Complainant and CDC Sub-Account activity report of the Complainant.*

4. *WHEREAS, the HCPL vide letter dated August 20, 2013 provided the ledger statement and account balance statements of the Complainant. However, copy of the financial instruments, CDC activity report and copy of trade confirmations as required under Rule 4(4) of the Securities and Exchange Rules, 1971 (“1971 Rules”) were not provided by the HCPL.*

5. *WHEREAS, while reviewing trading record of the Complainant at Stock Exchanges and CDC activity reports obtained from Central Depository Company of Pakistan Limited (“CDC”), it has observed that no transaction has been made in account of the Complainant with HCPL since opening of his account in September 2011. It has been further observed that despite closure of CDC Sub-Account of the Complainant on May 15, 2012, HCPL sent holding position to the Complainant via SMS messages during the year 2013.*


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6. **WHEREAS**, Section 18 of the Securities and Exchange Ordinance, 1969 (“Ordinance”) provides that no person shall, in any document, paper, accounts, information or explanation which he is, by or under this Ordinance, required to furnish, or in any application made under this Ordinance, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect in any material particular.

7. **WHEREAS**, Section 22 of the Ordinance provides that if a person contravenes or otherwise fails to comply with the provisions of this Ordinance, the Commission may, by order direct that such person shall pay to the [Commission] by way of penalty such sum not exceeding [fifty million] rupees.

8. **AND WHEREAS**, in light of the facts mentioned above, it appears that HCPL in contravention of Section 18 has submitted false and incorrect information to the Commission as the trading record of the Complainant at Stock Exchanges and CDC activity reports do not show any activity in his account with HCPL, while HCPL has provided the Commission ledger statements of the Complainant showing aggressive activity in his account.

9. **NOW THEREFORE**, you are called upon to show cause in writing by October 10, 2013, as to why action in terms of Section 22 of the Ordinance may not be initiated against HCPL for the prima facie violations as stated above. You are further directed to appear in person or through an authorized representative (with documentary proof of such authorization) before the undersigned, on October 11, 2013 at 10:00 a.m. at the Commission’s Head office at 9th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad. You are advised to bring all relevant record in original, which you may consider necessary for your defense/clarification. In case of failure to appear said date of hearing the matter will be decided on the basis of available record.

Yours truly,

(Hasnat Ahmad)
Director (BR&ICW)”

3. Pursuant to the said SCN, the Respondent submitted its written comments to the Commission vide letter dated October 10, 2013 wherein the Respondent made the following assertions:-

“..... That paragraph 3 and 4 of the SCN have already been responded to in the course of the hearing before the Commission on 30-07-2013 and the documents filed on behalf of HCPL thereafter. It has been stated that all trades were dully confirmed telephonically

as required by Rule 4(4) of the Securities & Exchange Rules, 1971. In this context the available telephone records were also filed along with other documents. The matter of financial instruments was also dealt with in detail during the arguments and it was stated that the financial instruments claimed / admitted by the Complainant were duly reflected in his ledger statement and account balance. HCPL submits, as it has done before, that it has credited the received amounts to the account of the Complainant and financial instrument issued to him has been duly debited to his account. The Complainant acknowledges and admits in his very complaint the financial instrument issued by HCPL. As for the CDC activity report, the reports attached with this communication will suffice for the purpose and it will be shown that the shares purchased / traded by the Complainant were held in HCPL account with the member of Karachi Stock Exchange who executed the trades on KATS.

3. *The contents of paragraph 5 of the SCN are presumptive and contrary to the record now attached to this communication. HCPL denies the allegation that no transactions were executed on the Complainant's account and states that the said assumption is contrary to facts of the matter and the record. The fact that the shares were held in the CDC account of HCPL and not the sub-account of the Complainant proves that the trades were executed and that the Complainant's positions were held in trust for him by HCPL. The holding position acknowledged by the Hon'ble Commission to have been communicated to the Complainant was so communicated in accordance with the prevalent industry practice and there was no element of deception to the same.*

4. *No record of the proceedings initiated on the complaint of the person named in the SCN suggests that HCPL never provided any information in any document, paper, account, information or explanation which the Company or any of its officers knew or had reasonable cause to believe to be false or incorrect in any material particular. The Hon'ble Commission will appreciate that the words "in any material particular" are critical in the facts of the instant case; and it is proved on the record of these proceedings, and the proceedings on the complaint of Mr. Muhammad Nadeem so far, that it is the Complainant who has made a false statement as to the authority given to the person who conducted all trades on his account.*

..... Therefore, in the light of the above facts and circumstances as also on the basis of the record furnished by HCPL throughout proceedings initiated on the complaint of Mr. Muhammad Nadeem so far, there is no cause for any proceedings to be initiated against HCPL as HCPL has not been guilty of deceptive trade confirmations as presumed."

4. On October 11, 2013, Mr. Owais Waheed i.e. authorized representative of the Respondent appeared before the undersigned and submitted a written request for adjournment of

the hearing and accordingly the hearing was rescheduled for October 24, 2013. The authorized representative of the Respondent appeared for hearing on the said date and took the stance that the Respondent did not provide any information which the Respondent knew to be false or incorrect in any material particular. He submitted that he shall take the same stance as communicated by the Respondent in its written comments.

5. I have examined the facts, evidences and documents on record, in addition to written and verbal submissions made on behalf of the Respondent. Looking into the facts of the case the following three issues are framed to decide the matter:-

- I. Submission of false and incorrect information;
- II. Trade confirmations under Rule 4 (4) of the Securities and Exchange Rules, 1971 (“**1971 Rules**”);
- III. Misappropriation of Funds deposited by the Complainant in his account

6. My findings on the above issues are as under:-

I. False and Incorrect Information:

- i). The Respondent has provided the Commission ledger statement and account balance statements of the Complainant’s account which show aggressive trading activity in the account of the Complainant. However, the information ascertained from the Stock Exchange trading data shows that not a single trade has been made against the Unique Identification Number (“**UIN**”) of the Complainant through the Respondent. Whereas Regulation 6.7 of the Unified Trading System Regulations (“**UTS Regulations**”) framed under Section 34(1) of the Ordinance provides that:

“Every Member while inserting a bid and offer through UTS for each of his clients shall insert unique client codes for those client which are maintained by them in their back office system and registered with NCCPL. The unique client code must be duly linked /mapped to the relevant UIN through the interface of NCSS as per the procedure specified by the NCCPL. The unique client code assigned by a Member to one client shall not be reassigned to another client even after the closure of a client’s account.

A Member shall ensure that at the time of settlement, Securities purchased or sold against a client code are delivered to the Sub Account and/or Investor Account of that particular client”.

- ii) Moreover, it is also evident from the CDC activity report that not a single share has ever been held in the sub-account of the Complainant since opening of his sub-account with

CDC which was opened on October 4, 2011 and closed on May 15, 2012. Further, the CDC activity report provided by the Respondent shows the holding position of the Respondent's CDC account maintained with Pearl Securities Limited not having any reference/linkage to the Complainant's account.

iii) The Respondent has also admitted in its statement that the shares of the Complainant were held in trust in its account rather than in the Complainant's CDC sub-account. Whereas, Regulation 41 of the General Rules and Regulation of the LSE ("**General Regulations**") framed under Section 34(1) of the Ordinance requires the Respondent to keep the shares owned by the investors in separate sub-accounts maintained under its participant ID. The same is reproduced below:

"(1) The Brokers shall ensure that the assets belonging to their clients are kept separated from the assets of the Broker. For this purpose the Broker shall maintain;

(a) A separate bank account which will include all the fund deposits of their clients along with record/breakdown of clients' balances.

(b) Separate sub-accounts under his Participant Account in Central Depository System (CDS) for each of his clients to maintain the custody of margins deposited by the clients in the form of securities and securities bought for clients.

(c) A Collateral Account under his Participant Account in CDS for all clients. This account shall be used exclusively for instances where outstanding payment has not been received from clients in respect of securities purchased on their behalf and relevant purchase obligation is to be settled. In such cases, the Broker will be allowed to transfer the securities on the respective settlement date from the respective sub-account to the Collateral Account for a maximum period of three (3) settlement days only to the extent of the transaction volume for which the client's payment is outstanding for whatsoever reason and comply with relevant requirements contained in the CDC Regulations. The Broker shall, in addition to the electronic reporting of such transfers through ways and means as specified by the Exchange report the Exchange in writing explaining the reason for utilizing the Collateral Account and / or for holding client's securities immediately after such transfer. The notice from the Broker will be accompanied with following documents:

i. Non-payment notice served on the client through courier, personal delivery method, facsimile, email or properly recorded telephone line, advising him to make payment by the close of banking hours on the next business day after the settlement day and notifying that, otherwise the Broker shall have a

right to dispose of the required securities to cover the shortfall in the client's account at client's risk and cost;

- ii. Client's sub-account and collateral account activity report of movement date and;*
- iii. Documentary evidence substantiating the genuineness and circumstances of the reason for non-payment by the client which may include failure of client to pay in time due to non-clearance of client's cheque, any natural calamity, law and order situation, non or delayed functioning of an automated procedure, e.g., NIFT.*

Provided that for a particular client, the Broker is allowed to transfer securities from the sub-account of client to the Collateral Account only once in a calendar month.

(2) Except as permitted above, the client's funds and securities shall not be used by the Broker for any purpose other than as authorized by the client in writing in the manner and procedure prescribed by the Exchange and/or CDC. The Broker shall be obliged to maintain and furnish documentary evidence to substantiate the compliance with the above regulations as and when required by the Exchange."

The above proves that the Respondent provided false and incorrect information regarding aggressive trading in the account of the Complainant to the Commission.

II. Trade Confirmation under Rule 4(4) of the 1971 Rules:

- i). With regard to assertion made by the Respondent that all trades were duly confirmed telephonically as required under Rule 4(4) of the 1971 Rules, it has been observed that the Respondent has submitted mobile bills showing the phone calls made and SMS messages sent to the Complainant, providing him detail of the holding position in his account. Whereas, Rule 4(4) of the 1971 Rules provides that:

"A member executing an order of a customer shall, within twenty four hours of the execution of the order, transmit to the customer a confirmation which shall include the following information, namely:-

- (a) date on which the order is executed;*
- (b) name and number of the securities;*
- (c) nature of transaction (spot, ready or forward and also whether bought or sold);*
- (d) price;*
- (e) commission, if the member is acting as a broker;*



(f) whether the order is executed for the member's own account or from the market.”

Further, clause 4 of Special Terms and Conditions of the Standardized Account Opening Form (“SAOF”) contained in the General Regulations, states that;

“the Broker shall provide the confirmation of the executed transactions to the Account Holder at the address given by the Account Holder in the SAOF by means of acceptable mode of communication or by hand subject to acknowledgement receipt within 24 hours.”


And that clause 17 of Special Terms and Conditions of the SAOF as executed by the Complainant provides that the:

“acceptable mode of communication between the Account Holder(s) and the Broker shall be through letter (courier/registered post/fax/Email) or by hand subject to receipt/acknowledgement. The onus of proving that the e-mail has been received by the recipient shall be on the sender sending the E-mail. Confirmation of order to clients made through fax or e-mail will have a time record.”

- ii). In view of the above, it is evident that the information provided by the Respondent through the phone calls and SMS Messages is not in accordance with Rule 4(4) of the 1971 and Special Terms and Conditions of the SAOF. Moreover, it has also been observed that the record of mobile bills and SMS Messages provided by the Respondent is only for the period 2013 onwards whereas the ledger statement and balance statement of the Complainant’s account provided by the Respondent showed aggressive trading in his account since the year 2011.
- iii). It is also pertinent to mention that the sub-account of the Complainant with CDC was closed on May 15, 2012 and it is strange that all the record i.e. SMS messages, mobile calls record etc. provided by the Respondent is for the period 2013 onward (i.e. after the closure of CDC sub-account of the Complainant).

III. Misappropriation of Funds Deposited by the Complainant in his Account:

- i). With regard to the misappropriation of funds deposited by the Complainant in his account, the Respondent in its statement admitted the receipt of amount from the Complainant which was duly credited to his account. The Respondent further admitted that the Complainant has provided the copies of the receipt voucher issued by it, along with his very Complaint. The detail of receipt vouchers provided by the Complainant is as follows:


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Date: 20-9-2011

**Online Interbranch Cash Transaction
Deposit Voucher**

Posted

30/09/2010

Branch: Mansehra Br
A/C REAL TIME ONLINE

20-09-2011

Amount	Value Date	Currency
495,000.00	20-09-2011	PKR

credited as follows :

FOUR HUNDRED NINETY-FIVE THOUSAND AND XX / 100 ONLY

09-2011

Original Amount Of Real Time On-Line IB Cash Deposit
At: MANSEHRA BRANCH To A/C #: 02910131
Title: HIGHLINK CAPITAL (PVT.) LTD. Mun. At:
STOCK EXCHANGE BR. LAHORE

Foreign Currency Account Only Local Currency Equivalent	Conversion Rate
--	-----------------

138MURD
Officer

IRCA #: 1012893792

(Deller's Signature) *[Signature]* (Authorized Signature) *[Signature]*



HIGHLINK CAPITAL (Pvt.) Ltd.
Corporate Member Lahore Stock Exchange (Guarantor) Ltd. Code # 471

279 - CCA,
Block TE, Phase - I,
DHA, Lahore-Pakistan,
Tel: 042-3533152
Fax: 042-3533153
www.highlinkcapital.com

RECEIPT VOUCHER

No. 2741

Date 12-10-11

A/c No. 4027

Received with thanks from Muhammed Naddeem
the sum of Rupees One lac Sixty Thousand of

by Cash / Cheque / Draft No. 0300691 BANK Date _____

On account of _____

Rs. = 160000/-
Subject to realization of Cheque

[Signature]
for Highlink Capital (Pvt.) Ltd.

[Signature]



(FORMERLY ADHI SECURITIES PVT. LTD.)

HIGHLINK CAPITAL (Pvt.) Ltd.

Corporate Member Lahore Stock Exchange (Guarantee) Ltd. Code # 003

279 - CCA,
Block FF, Phase - 4,
DHA, Lahore-Pakistan.
Tel: 042-5747820-22
Fax: 042-5747819
www.highlinkcapital.com

RECEIPT VOUCHER

No. 2743

Date 4-11-11

A/c No. 4027

Received with thanks from MUHAMMAD NADEEM

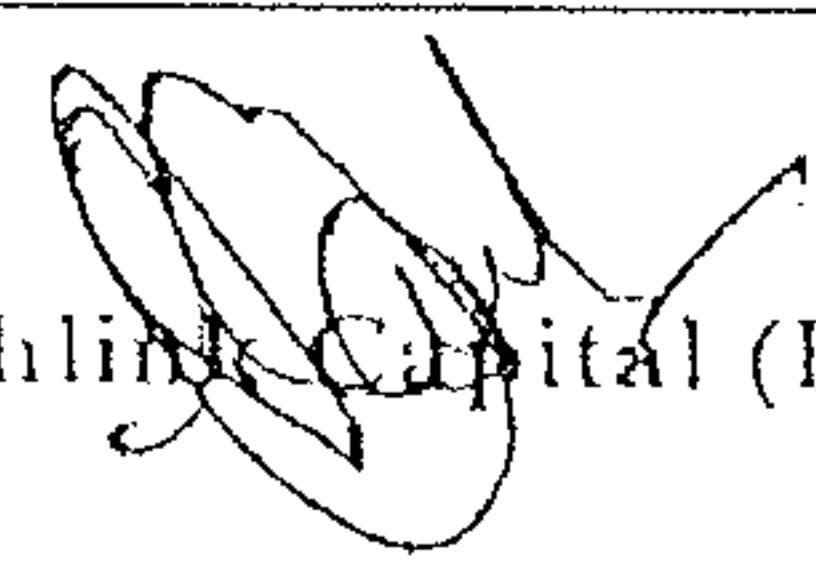
the sum of Rupees FOUR LAC NINETY FIVE THOUSAND ONLY

by Cash / Cheque / Draft No. 0008382 Date _____

On account of AAIF INVEST BANK

Rs. = 495000/-
Subject to realisation of Cheque

TRADING


for Highlink Capital (Pvt.) Ltd.



(FORMERLY ADHI SECURITIES PVT. LTD.)

HIGHLINK CAPITAL (Pvt.) Ltd.

Corporate Member Lahore Stock Exchange (Guarantee) Ltd. Code # 003

279 - CCA,
Block FF, Phase - 4,
DHA, Lahore-Pakistan.
Tel: 042-5747820-22
Fax: 042-5747819
www.highlinkcapital.com

RECEIPT VOUCHER

No. 2756

Date 25-1-12

A/c No. 4027

Received with thanks from MUHAMMAD NADEEM

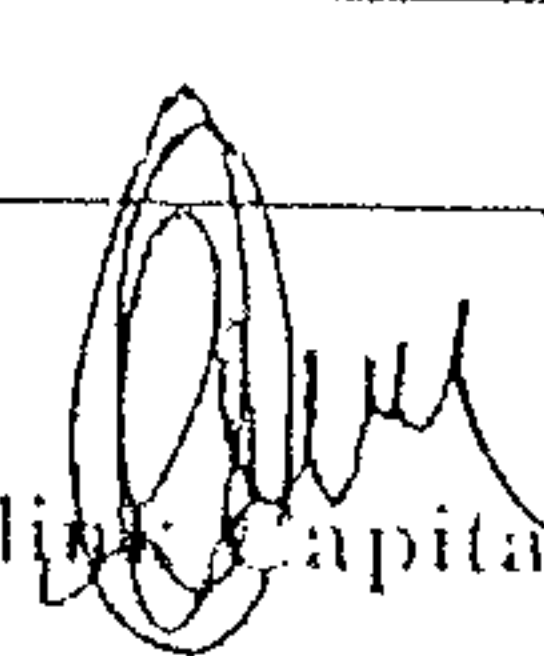
the sum of Rupees FOUR LAC FIFTY THOUSAND ONLY

by Cash / Cheque / Draft No. 0008387 Date _____

On account of AAIF

Rs. 450000/-
Subject to realisation of Cheque

TRADING


for Highlink Capital (Pvt.) Ltd.

Handwritten initials

ii). From the above it is evident that the Complainant has deposited the following amount in his account maintained with the Respondent.

	Date of Receipt	Amount (Rs.)
1	September 20, 2011	495,000/-
2	October 12, 2011	160,000/-
3	November 4, 2011	495,000/-
4	January 25, 2012	450,000/-
	Total Amount Deposited	1,600,000/-

As per the receipt vouchers provided by the Complainant, the Respondent received a total sum of Rs.1,600,000/- from the Complainant and since no trading against the UIN of the Complainant has been made through the Respondent, therefore, it is established that the Respondent has misappropriated the funds of the Complainant.

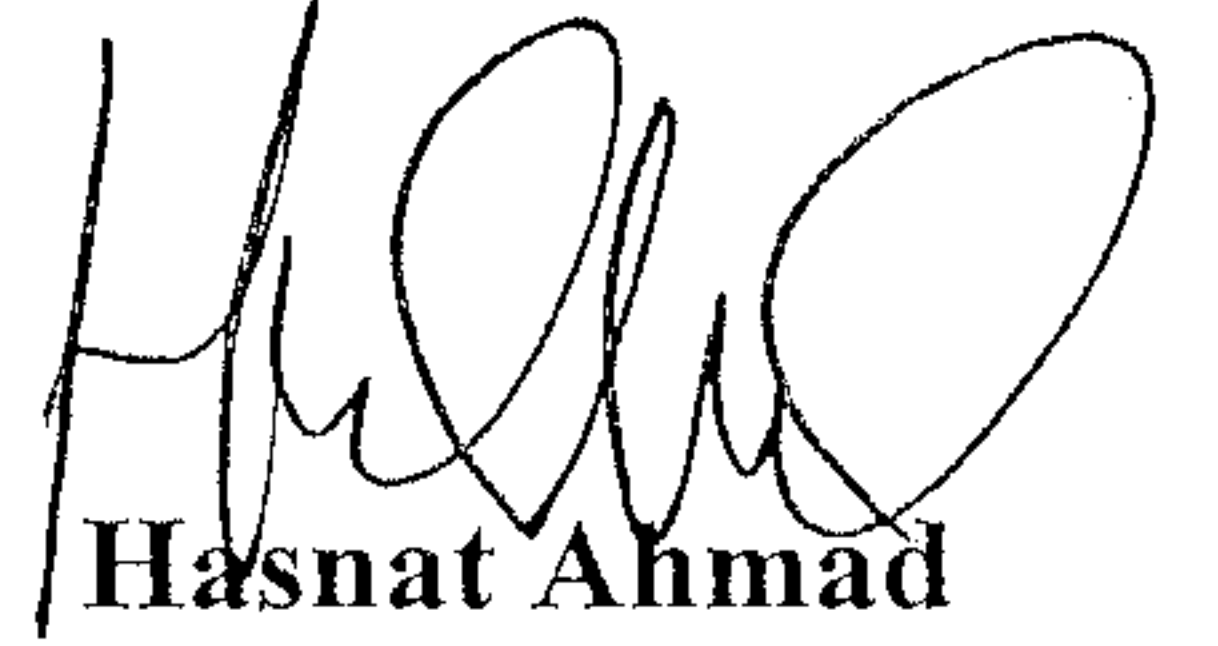
7. In view of the foregoing, it is evident that ledger statement and account balance statements of the Complainant provided by the Respondent do not match with the Stock Exchange trading data and UIN of the Complainant; therefore, it is suffice to believe that the Respondent has provided incorrect information to the Commission with regard to the trading activity in the Complainant's account. The stance of the Respondent that the shares of the Complainant were held in trust in its account is not acceptable. Thus, the violation of Section 18 of the Ordinance stands established. In case any person contravenes or otherwise fails to comply with the provisions of this Ordinance or any rules or regulations made thereunder, the Commission may by order direct such person to pay the Commission by way of penalty such sum in accordance with Section 22 of the Ordinance.

8. The violation of the Ordinance, rules and regulations is a serious matter and therefore, I hereby direct the Respondent to pay the Commission by way of penalty a sum of Rupees Five Hundred Thousand only (Rs.500,000/-) on account of violation of Section 18 of the Ordinance.

9. Moreover, the Respondent in its statement admitted the receipt of amount from the Complainant which was duly credited to his account and it has been proved that the Respondent neither executed any trade in the Complainant's account by using his UIN nor placed any share in his sub-account; therefore, the Respondent is directed to pay back the above amount to the Complainant within 30 days of this order under intimation to the Commission.

10. This matter is disposed of in the above manner and the Respondent is directed to deposit the amount of penalty as mentioned in paragraph 7 above in the account of the Commission being maintained in the designated branches of the MCB Bank Limited not later than thirty (30) days from the date of this Order and furnish copy of the deposit challan to the undersigned.

11. The order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with the law on matters subsequently taken up or investigated and/ or brought to the knowledge of the Commission.



Hasnat Ahmad
Director (BR&ICW)



Announced on November 13, 2013
Islamabad.