



# Securities and Exchange Commission of Pakistan

Securities Market Division

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Through Courier

**Before The Director / HOD (MSCID) in the matter of Show Cause Notice  
issued to BMA Capital Management Limited, TREC Holder / Broker of  
Karachi Stock Exchange Limited**

*Date of Hearing:*

*November 12, 2012*

*Present at the Hearing:*

*Representing BMA Capital Management Limited*

*(i) Mr. Moazzam M. Malik*

*Chief Executive Officer*

*(ii) Mr. Bilal Shaukat*

*Legal Counsel*

*Assisting the Director (SMD)*

*(i) Mr. Muhammad Ali*

*Deputy Director*

## **ORDER**

1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. Misc./ MSW / SMD /1 (05) 2004/ 1621 dated October 17, 2012 ("SCN") issued to BMA Capital Management 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") and Rule 8 of the Brokers and Agents Registration Rules, 2001 ("Brokers Rules").

2. The brief facts of the case are that the Respondent is registered with the Commission as Broker under the Brokers Rules. As per the trading data of KSE for August 24, 2012, the Respondent purchased 578,000 shares of Bata Pakistan Limited ("BATA") in the Off Market at the rate of Rs. 920 in its proprietary account from its client, namely National Bank of



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Pakistan ("NBP"). Subsequently, on August 29 & August 30, 2012, the Respondent sold a cumulative 587,500 shares of BATA at the rate of Rs. 1,000 in the Off Market to its client, BAFIN (NEDERLAND) B.V. ("BAFIN"), an associate company of BATA. It is pertinent to mention that the aforementioned transactions resulted in an approximate profit of Rs. 46 million to the Respondent.

3. The Commission sought clarification from the Respondent vide letter dated September 03, 2012 regarding the above-mentioned transactions which resulted in a significant gain to the Respondent. Further, Respondent was advised to submit complete documentation exchanged between NBP, BAFIN and Respondent for execution of the aforementioned transactions.

4. The Respondent vide letter dated September 11, 2012 requested ten days time to respond the letter, which was accepted by the Commission vide letter dated September 13, 2012. The Respondent vide letters dated September 20, 2012 and September 27, 2012 requested further extension for submission of reply, in response to which the Respondent was advised vide letter dated September 27, 2012 to submit a reply by October 03, 2012 positively.

5. The Respondent submitted its reply vide letter dated October 03, 2012 through which it informed that the share price of BATA was Rs. 789 on August 17, 2012, and on the same day negotiations were initiated with NBP for purchase of shares of BATA at the rate of Rs. 920 which was at a premium of 16.6%. On August 24, 2012 the Respondent purchased 578,000 shares of BATA at the rate of Rs. 920 from NBP. The Respondent further informed that BAFIN was fully aware that the Respondent has negotiated a price of Rs. 920 per share with NBP and BAFIN agreed to pay Rs. 1,000 per share of BATA. The Respondent provided copies of two e-mails exchanged with NBP whereas it failed to provide copies of communication exchanged between BAFIN and the Respondent regarding the above-mentioned transactions.

6. Since the response of the Respondent was found unsatisfactory and was not supported by sufficient evidence, an SCN dated October 17, 2012 was issued to the Respondent under Section 22 of the Ordinance and the Brokers Rules stating that the





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Respondent has *prima facie* contravened Clauses A(1), A(2), A(5) and B(6) of the Code of Conduct set forth under the third schedule of the Brokers Rules. The Respondent through SCN was asked to explain its position through written reply within ten days of issuance of SCN and also appear in person or through an authorized representative before the undersigned at Commission's Head Office, Islamabad on October 31, 2012 for hearing. The Respondent vide letter dated October 23, 2012 requested for two weeks time for submission of reply to SCN. Therefore, on the request of the Respondent, an extension of two weeks was granted. The date of hearing was fixed on November 12, 2012 and venue of the hearing was shifted from Islamabad to Karachi.

7. RIAA LAW Advocates & Corporate Counselors, on behalf of the Respondent, vide letter dated November 05, 2012 submitted a written response to the SCN. The important contentions raised in the response are reproduced hereunder:-

*"That the Show Cause notice issued under Section 22 of the Securities & Exchange Ordinance and under Rule 8 of the Brokers & Agents Registration Rules 2001 fails to provide details of the alleged contraventions of the Code of Conduct. BMA Capital Management ("BMA") is a public Limited company which has been providing brokerage and other financial services to its customers since 1992. BMA has been awarded with many honors and achievements since its establishment. BMA is a corporate member of the Karachi Stock Exchange, Pakistan Mercantile Exchange and holds licenses as an NBFC and Licensed Asset Manager & Investment Advisor and also holds a Foreign Exchange and Fixed Income License. It is pertinent to note that BMA in its entire history has never violated any law".*

*"The transactions highlighted in the Show Cause Notice ('Subject Proprietary Trades') both National Bank of Pakistan ("NBP") and BAFIN (Nederland) B.V. ("BAFIN") were acting as sellers and buyers (as the case may be) and not as 'clients' of BMA. It is a settled position that all brokers are permitted to conduct proprietary trading through their proprietary accounts for personal gain. It is therefore submitted that by conducting a proprietary trade BMA has not violated any provision of the Ordinance of 1969 or Rules of 2001 including the Clauses A(1)(2) and (5) and B(6) of the Code of Conduct."*

*"It seems that the Securities and Exchange Commission of Pakistan (the 'Commission') has misunderstood the Subject Proprietary Trades conducted by BMA with routine brokerage services. It is pertinent to note that in the case of proprietary trades the brokerage house is acting as an*



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*independent buyer/seller and not as an agent for a third party and as such there cannot be a client-broker relationship between the two entities. It is only in the case of routine transactions (i.e. non proprietary trades) where the brokerage house is simply acting as a broker for transferring the securities from a seller to the buyer for a commission on the basis of firm orders placed by them. In such cases the broker does not act as a seller or buyer and the sale or purchase is not recorded in the proprietary account of the brokerage house."*

*"The trades in question were conducted on the Negotiated Deals Market ("NDM") and were duly recorded in Karachi Stock Exchange ("KSE") Off Market Transactions report which is displayed on KSE's website and in the public domain. It is submitted that given that the Subject Proprietary Trades were admittedly done through the 'proprietary account' of BMA neither NBP nor BAFIN can be classified as a 'client' of BMA. It is submitted that BMA was well within its legal mandate to conduct such transactions for its personal benefit and has not violated Clauses A(1)(2) and (5) or B(6) of the Code of Conduct as alleged in the Show Cause Notice or otherwise. "*

*"That the email exchange of 17<sup>th</sup> August 2012 between NBP & BMA demonstrates that NBP had specified that it would sell the shares of BATA at Rs. 920 per share. This was admittedly at a steep premium of 16.6% to the then prevailing market price of approximately Rs, 789/- per share. The very ethos of Off Market transactions is that such transactions are conducted through negotiation rather than through an auction system hence, there is no cap or floor on the price level. NBP was within their legal right to choose to sell at a specified premium and BMA was within its legal right to buy the shares from NBP through its proprietary account."*

*"BMA is willing to provide necessary details which may be relevant for the purposes of the enquiry. It is submitted that BMA has conducted proprietary trades from its proprietary accounts, which is permissible by law. Both NBP and BAFIN have not raised any concerns in relation to the Subject Proprietary Transactions. Under the circumstances, it is not clear as to why the SECP considers BMA to have acted in violation of the provisions of the Code of Conduct referred to in the Show Cause Notice and why the Commission is of the view that BMA has failed to (a) maintain standards of integrity, (b) act with due skill, care and diligence, (c) abide by the rules and regulations and (d) be fair to the client. "*

*"That the contents of paragraphs 6 to 9 are also denied and for the sake of brevity the contents of the paragraphs above are reiterated. Proprietary trading and consequent gain by a brokerage house is not unlawful and has not been prohibited by either the Ordinance of 1969 or the Rules of 2001.*





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*The mandatory prerequisites of either Section 22 of Ordinance of 1969 or rule 8 of Rules of 2001 have not been satisfied and are not applicable to the facts of the instant matter. That we reserve the right to adduce any additional grounds and make further submissions in due course. For the reasons stated hereinabove, it is respectfully prayed that the Show Cause Notice may be withdrawn."*

8. A hearing in the matter was held on November 12, 2012 at the Commission's office at Karachi. Mr. Moazzam M. Malik, ("CEO") and Mr. Bilal Shaukat from RIAA LAW Advocate & Corporate Counselors ("Legal Counsel") appeared on behalf of the Respondent. The submissions made by them during the course of hearing and proceedings of the hearing are summarized as under:

- i) At the outset, CEO explained in detail about the background and historical performance of the Respondent. He apprised that Respondent is a very reputed institution and was established in 1992. The Respondent has been awarded with many honors and achievements since its establishment because it provides the best financial services to its clients and always adhere to the applicable rules and regulation. He further stated that a number of foreign investors are clients of the Respondent because of its integrity and maintaining the secrecy.
- ii) The Legal Counsel contended that the transactions in question were lawful and it is a common practice in the stock market. He further contended that Respondent acted as buyer and seller with NBP and BAFIN in the transactions of BATA. Respondent was not intermediary in the transactions as shares were bought from NBP as buyer and then sold to its client BAFIN as seller. There is no question of best market price because BMA did not act as intermediary and these transactions were executed in Off Market on agreed price by NBP, BAFIN and the Respondent.
- iii) The CEO stated that the Respondent bought shares of BATA from



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NBP at Rs. 920 in its proprietary account on August 24, 2012. In that transaction NBP wanted to sell shares of BATA at Rs. 920 i.e. at premium to market price which was Rs. 780 at that time. CEO stated that deal was negotiated with NBP via emails and phone and they were not willing to sell the shares below Rs. 920, subsequently NBP sold shares of BATA to the Respondent after getting an approval from its Investment Committee. He further stated that NBP is a reputed institution and transactions in question were executed after getting the requisite approvals from the senior authorities of NBP as per the relevant rules and regulations.

- iv) The CEO stated that the Respondent sold shares of BATA to BAFIN on agreed price of Rs. 1,000. He argued that many large brokerage houses trade through their proprietary accounts wherein they buy and sell shares from their different clients. In support of his argument, he provided Profit and Loss statements of three different brokerage houses that traded through proprietary accounts.
- v) The CEO was questioned about the quantum/trading volume of the Respondent's proprietary account. The CEO replied that Respondent has investment of Rs. 100 million to Rs. 150 million for trading in proprietary account but whenever the Respondent finds any opportunity, it buys and sells large quantity of shares depending on the circumstances.
- vi) During the course of hearing, the CEO was confronted with the fact that the time and volume of transactions was very important because BATA is very illiquid scrip and Respondent earned huge profit in very short span of time and one leg of the transaction was executed with a foreign company which is an associated company of BATA. The CEO, in response stated that the sponsors





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of Respondent came from abroad in early 1990 and setup the brokerage house. They took a different approach from the other brokerage houses and started publishing research reports and foreign companies/investors were given presentations regarding the performance of Pakistan capital market and as a result of these efforts, huge foreign investment was made by foreign companies in stock market through Respondent. The CEO further stated that the foreign client had not filed any complaint against the transaction as it was executed at a mutually agreed price. The Respondent took four days of risk in very illiquid scrip, and as evident from the record, in the month of October, the share price of BATA went up to Rs. 1,500 whereas Respondent sold the shares of BATA at price of Rs. 1,000 due to the risky nature of the scrip.

- vii) On being asked when BAFIN opened its trading account with Respondent and when BAFIN showed its interest for purchase of shares of BATA to the Respondent, the CEO responded that BAFIN had been the Respondent's client since last year. The CEO further informed that before the transaction of BATA the Respondent approached NBP for purchase of four or five different scrips but NBP showed its interest for sale of shares of BATA only and the Respondent bought these shares from NBP on steep premium. After the transaction with NBP, BAFIN showed an interest in purchasing of BATA shares. On further inquiry as to whether BAFIN was aware of the transaction between Respondent and NBP and why Respondent did not act as agent between the NBP and BAFIN being its broker, the CEO explained that BAFIN was aware of the transaction between the Respondent and NBP and the Respondent acted in its own capacity not as



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intermediary because all these transactions were recorded in Respondent's proprietary book.

viii) On being asked about the mode of placing orders by BAFIN, and whether there were any documents and/or telephonic recording evidencing the placement of order of BATA by BAFIN, the CEO replied that most of the negotiation was made on mobile phone and at the time of negotiation he was in Singapore. The CEO reiterated his stance that it was a deal between Respondent and BAFIN and same was executed through Off Market, therefore, BAFIN did not place any particular orders on any recorded telephone line. After the completion of negotiation the orders were placed by the BAFIN.

ix) The attention of Legal Counsel and CEO was invited towards contradictory statement between first reply of the Respondent and reply of its SCN. The stance of the Respondent in its first letter dated October 03, 2012 is reproduced below:-

*"our instruction from BAFIN were to try to reduce the price of BATA shares we buy from National Bank to the best of our ability".*

Whereas in the reply of SCN the Legal Counsel stated that Respondent was acting as buyer and seller in the scrip and not negotiating on behalf of BAFIN. The Legal Counsel apprised that the first reply was drafted by the CEO and it covers the simple question asked by the Commission but the reply of the SCN was drafted by the Legal Counsel while keeping in view all the legal points raised by the Commission in the SCN.

x) The CEO prayed that the Commission may take a lenient view in this matter and drop the proceedings together with the SCN because the





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said trades were normal market practice and nothing illegal was done by the Respondent.

9. During the course of hearing, the Respondent was requested to provide its last three years proprietary trading history, the settlement statement of National Clearing Company of Pakistan Limited ("NCCPL") showing the settlement date of above-mentioned transactions and correspondence exchanged with BAFIN regarding the execution of transaction in the scrip of BATA. The Legal Counsel of the Respondent vide letter dated November 23, 2012 provided the requisite information to the Commission. It is important to note that Respondent through its above-mentioned reply provided a copy of email dated November 18, 2012 sent by Mr. Tim Jude, Vice President Finance of BATA Brands SA, Switzerland to the CEO of the Respondent, the contents of the e-mail are reproduced as under:-

*"This is with reference to our purchase of 587,500 shares of BATA from your company at a price of Rs. 1,000 per share. For the sake of record we are pleased to confirm that we did not enter into any agreement or placed any firm order with BMA for the purchase of BATA shares until 27 August 2012. We considered BMA to be a highly professional company and look forward to doing further business with you in the near future."*

10. After receiving the information from Respondent, Mr. Tim Jude was contacted by the Commission through email dated November 30, 2012 and he was requested to provide the correspondence between BAFIN and Respondent for purchase of shares of BATA and the date of placing firm bid for purchase of shares of BATA by BAFIN. Mr. Tim Jude vide email dated December 04, 2012 provided his comments on the queries of the Commission. The contents of the reply are reproduced as under:-

*"We have been discussing with BMA for quite some time opportunity for acquiring shares. However, it was only around August 27, if I recall correctly, that a firm opportunity arose for BAFIN to acquire some shares. The persons involved were Mr. Moazzam Malik from BMA and myself from BAFIN and it must have been on August 27 or August 28, 2012 as a first transaction was concluded on August 29, 2012".*



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11. I have heard the arguments presented by the CEO and the Legal Counsel at length during the hearing. Additionally, I have perused the available record and the written reply filed by the Legal Counsel on behalf of the Respondent. Accordingly, my findings on the arguments and assertions made by the Respondent to the issues raised in the SCN are as follows.

12. The contention made by CEO and Legal Counsel that Respondent is one of the reputed financial institution of Pakistan and provides the large scale privatization advisory service to its clients and having large base of foreign clients is factual and need no comments. Having said that being a reputed institution and having large base of foreign clients, it is the obligation of the Respondent to work more professionally and prudently. It is required by market intermediaries to treat their customer in a fair manner characterized by high standards of honesty and integrity. The primary duty of a broker is to act as an agent for parties who wish to buy or sell shares and not to enter into transactions where conflict of interest arises between the broker and its clients. It is the broker's responsibility to always place the interests of the customer ahead of its interest. The broker's obligations and duty to the customer must be paramount. This is not only moral duty of broker but Law also put onus on the shoulders of the broker to give preference to its client when such situation arises.

13. Conflict of interest is a fundamental and pervasive issue both in developed and emerging capital markets where transactions between the market participants are primarily assisted by market intermediaries. Market intermediaries in primary and secondary capital markets have to balance their own interests and those of issuers and investors. Situations creating a conflict of interest could occur between a broker and a client and between different groups of clients. The former class of conflict takes place between a broker's own economic interests and the interests of its clients. A broker holds an informational advantage over its clients, which can lead to the broker not necessarily working in the client's best interest. A conflict of interest is a set of circumstances that creates a risk that professional judgment or actions regarding primary interest will be influenced by the secondary interest. The best way





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to handle the conflict of interest is to avoid situations which place broker in positions where its duty to its clients is at odds with its personal interest.

14. In the present legal framework the issue of conflict is addressed through the Code of Conduct annexed as Schedule III of the Brokers Rules and the Regulations for Proprietary Trading, 2004 of the KSE. The Clause 6 of the Part B of the Code of Conduct provides as follows:

*"Fairness to client. - A broker, when dealing with a client, shall disclose whether he is acting as a principal or as an agent and shall ensure at the same time that no conflict of interest arises between him and the client. In the event of a conflict of interest, he shall inform the client accordingly and shall not seek to gain a direct or indirect personal advantage from the situation and shall not consider client's interest inferior to his own."*

Moreover, Clause 6 of the Regulations for Proprietary Trading, 2004 of the KSE provides as follows:

***"Conflict of Interest and Disclosure by Brokers:-***

*(i) The broker shall disclose to his customer placing an order in a particular security, while accepting such order, whether he intends to or is carrying out proprietary trading in that security on that particular day.*

*(ii) The broker, if doing proprietary trading through agents/traders, shall disclose the name(s) of such persons to his customers.*

*(iii) In case a broker engages in proprietary trading with another broker, both the brokers shall disclose their names to the Exchange."*

15. As evident from the above, proprietary trading is not prohibited for the broker but the Law has set certain parameters and restrictions, which a broker has to follow for trading in its proprietary account, in order to protect the interest of the clients. In the instant case, although the Respondent has conducted proprietary trades from its proprietary account, the pattern of trading by the Respondent is very unusual and abnormal. The transactions under question were very peculiar in nature since in a very short span of time huge profit was earned by the Respondent. The shares of BATA were bought from a local financial institution and sold to a foreign investor which was also an associated company of BATA. It is important to note that



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BAFIN was already accumulating the shares of BATA from KSE through Respondent. The perusal of record revealed that BAFIN has only one trading account which is maintained with the Respondent and was opened in the month of July 2011. Since the opening of its trading account BAFIN only traded in the scrip of BATA and before the abovementioned transactions BAFIN bought 562,366 shares of BATA through Ready Market and Off Market. Following is the detail of Ready Market trading of BAFIN in the scrip of BATA.

**Table: 1**

Sr. No	ORD_DATE	BOT_QTY	BOT_RATE	SOLD_QTY	SOLD_RATE	NET_QTY
1	2011-07-05	1,175	637.73	0		1,175
2	2011-07-06	141	649.36	0		141
3	2011-07-07	85	648.03	0		85
4	2011-07-11	212	648.31	0		212
5	2011-07-12	118	648.30	0		118
6	2011-07-13	49	650.00	0		49
7	2011-07-15	2	650.01	0		2
8	2011-07-18	181	650.00	0		181
9	2011-07-28	203	640.19	0		203
10	2011-07-29	90	640.00	0		90
11	2011-08-01	7,700	675.00	0		7,700
12	2011-08-05	527	643.99	0		527
13	2011-08-08	300	650.00	0		300
14	2011-08-09	115	645.65	0		115
15	2011-08-10	98	649.95	0		98
16	2011-08-18	100	650.00	0		100
17	2011-08-19	100	650.00	0		100
18	2011-08-22	290	650.00	0		290
19	2011-08-24	200	668.85	200	650	0
20	2011-09-12	30	632.67	0		30
21	2011-09-15	400	650.00	0		400
22	2011-09-16	200	650.00	0		200
23	2011-09-19	250	687.00	0		250
24	2011-09-26	11	645.00	0		11
		<b>12,577</b>	<b>664.56</b>	<b>200.00</b>	<b>650</b>	<b>12,377</b>





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Following is the detail of Off Market trading of BAFIN in the scrip of BATA.

**Table: 2**

Sr. No	ENTRY_DATE	BUYER_NAME	TRADE_QTY	TRADE_RATE
1	7/29/2011	BAFIN (NEDERLAND) B.V.	25,000	690
2	7/29/2011	BAFIN (NEDERLAND) B.V.	25,000	690
3	7/29/2011	BAFIN (NEDERLAND) B.V.	25,000	690
4	7/29/2011	BAFIN (NEDERLAND) B.V.	25,000	690
5	7/29/2011	BAFIN (NEDERLAND) B.V.	25,000	700
6	7/29/2011	BAFIN (NEDERLAND) B.V.	25,000	700
7	7/29/2011	BAFIN (NEDERLAND) B.V.	25,000	700
8	7/29/2011	BAFIN (NEDERLAND) B.V.	25,000	700
9	7/19/2011	BAFIN (NEDERLAND) B.V.	25,000	715
10	7/19/2011	BAFIN (NEDERLAND) B.V.	25,000	715
11	7/19/2011	BAFIN (NEDERLAND) B.V.	25,000	715
12	7/19/2011	BAFIN (NEDERLAND) B.V.	13,232	715
13	7/19/2011	BAFIN (NEDERLAND) B.V.	25,000	715
14	7/19/2011	BAFIN (NEDERLAND) B.V.	25,000	715
15	7/19/2011	BAFIN (NEDERLAND) B.V.	25,000	715
16	7/19/2011	BAFIN (NEDERLAND) B.V.	25,000	715
17	7/19/2011	BAFIN (NEDERLAND) B.V.	25,000	715
18	7/19/2011	BAFIN (NEDERLAND) B.V.	25,000	715
19	7/15/2011	BAFIN (NEDERLAND) B.V.	25,000	690
20	7/15/2011	BAFIN (NEDERLAND) B.V.	25,000	690
21	7/15/2011	BAFIN (NEDERLAND) B.V.	25,000	690
22	7/15/2011	BAFIN (NEDERLAND) B.V.	25,000	690
23	7/15/2011	BAFIN (NEDERLAND) B.V.	11,757	690
24	8/29/2012	<b>BAFIN (NEDERLAND) B.V.</b>	<b>259,400</b>	<b>1,000</b>
25	8/30/2012	<b>BAFIN (NEDERLAND) B.V.</b>	<b>328,100</b>	<b>1,000</b>
			<b>1,137,489</b>	<b>856.23</b>

16. It is important to note that the free float of BATA is only 2.646 million shares and most of the shares have already been accumulated by BAFIN which only traded in the scrip of BATA since opening of its account with Respondent. The Respondent was aware of the fact that BAFIN is only trading and accumulating the shares of its associate company BATA and will buy more shares at any agreed price if offer is given to it. Moreover, Mr. Tim Jude in his email dated December 4, 2012 to the Commission admitted that BAFIN was in discussion with BMA for quite some time regarding the opportunity for acquiring shares of BATA. It is



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evident that Respondent took advantage of this fact by buying the shares of BATA from NBP and then selling these shares to BAFIN at a steep price and resultantly making a huge gain.

17. Interestingly, there is contradiction between the Respondent's first reply dated October 03, 2012 and reply to SCN submitted to the Commission. In its first reply the Respondent mentioned that BAFIN had instructed it to negotiate with NBP on lower rates for purchase of BATA shares whereas in the reply to SCN the Legal Counsel stated that Respondent was acting as buyer and seller in the scrip and not negotiating on behalf of BAFIN. In this regard, it is pertinent to note that Mr. Tim Jude through email informed the Commission that discussion for acquiring the shares of BATA were going on with the Respondent for quite some time, whereas instead of providing communication between the Respondent and BAFIN at the time of execution of transactions, the Respondent provided a post transaction email dated November 18, 2012 sent by Mr. Tim Jude to the CEO regarding the execution of above-mentioned transactions in the scrip of BATA. The contradiction in the statement of the Respondent shows that the Respondent was aware of the fact that BAFIN had a keen interest in buying the large quantity of shares of BATA, whereas the Respondent acted as buyer and seller in the whole deal instead of acting as intermediary between the parties which was the primary responsibility of the Respondent.

18. A review of the last three years proprietary trading history of the Respondent shows that transactions of similar nature were not undertaken by the Respondent with any of its client. In the instant case, the Respondent failed to safeguard the interest of NBP and BAFIN by giving preference to its own interest over their interest. The Respondent when dealing with NBP and BAFIN should have disclosed whether it was acting as a principal or as an agent and should have ensured that no conflict of interest arises.

19. The analysis of NCCPL settlement statements provided by the Respondent transpires that the Respondent bought shares of BATA from NBP on August 24, 2012 and the settlement of these shares was made on August 28, 2012 after four days of execution of this transaction. Subsequently, the Respondent sold the shares to BAFIN on August 29 and August 30, 2012 and settlement of these transactions was made on August 30 and August 31, 2012. It is





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evident from this analysis that settlement of the transactions were arranged in such a way that Respondent only took a financial risk of two days instead of four days as stated by the CEO of the Respondent.

20. The primary responsibility of a broker is to advise the clients and act on their behalf for the purchase and sale of shares. It was the duty of the Respondent to fulfill its prime responsibility to execute these transactions at the best available market price in a transparent manner, in order to safeguard the interest of its clients. Further, it was the duty of the Respondent to avoid the conflict of interest with its clients and in this particular case the Respondent failed to fulfill this duty. The manner of trading by the Respondent in its proprietary account evidently illustrates that the Respondent bought and sold shares of BATA in its proprietary account with the malafide intention of making a personal gain, at the expense of its clients.

21. After a detailed and thorough perusal of the facts, evidence/information available on record, contentions and averments made by the CEO and Legal Counsel during the course of the hearing, it is evident that the Respondent failed to act with due skill, care and diligence in conduct of its business and also failed to protect the interest of its clients. By executing the abovementioned transactions the Respondent has failed to maintain high standards of integrity. In order to maintain the confidence of investors in the securities market, a number of rules, regulations and procedures have been formulated by the Commission which prescribe the minimum set of standards that a broker has to follow but it is expected of a broker to adopt the highest moral values and principles of ethics. A broker should be perceived as professional that is beyond reproach and it should perform its services in a fair, proficient and impartial manner.

22. A profit of Rs. 46 million made through these transactions by the Respondent was actually a loss suffered by either NBP or BAFIN. The unfair trade practices adopted by the Respondent are harmful for the development of the capital market, damaging to the integrity of stock market and detrimental for the interest of market participants. It was the responsibility of the Respondent to execute the transactions between its clients at best available rate in a transparent and faithful manner. However, in this particular case the



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Respondent failed to safeguard the interest of NBP and BAFIN and consider their interest inferior to its own interest. Consequently, it is established that the Respondent has contravened the provisions of the Code of Conduct prescribed in the third schedule of the Brokers Rules. A broker holding certificate of registration has to, at all times abide by the Code of Conduct set forth under the Brokers Rules but the conduct of the Respondent in the instant case leaves this office with no doubt that the act of Respondent is not proper, willful and is setting a negative precedence which is not in the interest of the public or capital markets.

23. The Commission has taken a very serious note of such conduct of the Respondent. I am of the view that a broker must act honestly and not to engage in conduct that would bring its integrity in question. Moreover, a broker must comply with the professional standards and principles of ethics and never compromise those standards for its personal interest. I believe that it is the responsibility of every stakeholder to play its due role to ensure that market is fair, honest, efficient and transparent for the protection of investors.

24. A violation of the Rules and Regulations is a serious matter which entitles the Commission to even suspend the Respondent's registration but I have elected not to exercise this power at present. However, in exercise of the powers under Section 22 of the Ordinance, I hereby impose on the Respondent a penalty of Rs. 50,000,000/- (Rupees Fifty Million only). The Respondent is directed to ensure that in future full compliance is made of all rules, regulations and directives of the Commission.

25. 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.



  
(Imran Inayat Butt)  
Director / HOD (MSCID)

Announced on February 19, 2013  
Islamabad.