



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
NIC BUILDING BLUE AREA, ISLAMABAD

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Before the Director (Securities Market Division)

In the matter of Show Cause Notice No. SMD/SE/2(77)/2003 dated March 04, 2010 and subsequent letter dated April 02, 2010 (together the SCN) issued to **Islamabad Stock Exchange (Guarantee) Limited** under Section 22 of the Securities and Exchange Ordinance, 1969.

**ORDER**

This order shall dispose of the proceedings initiated through the above-mentioned SCN issued to the Islamabad Stock Exchange (Guarantee) Limited (the "Respondent" and/or ISE" ) by the Securities and Exchange Commission of Pakistan (the "Commission") under Section 22 Securities and Exchange Ordinance, 1969 (the "Ordinance") for violation of Regulation No. 32(1) of the Listing Regulations of Islamabad Stock Exchange (Guarantee) Limited (the "Listing Regulations").

2. Brief facts of the case are that:

- i. the Respondent vide notices No. DCA 10/018 and DCA 10/019 both dated January 21, 2010 had notified its approval for provisional listing of Fatima Fertilizer Company Limited (the "Company") with effect from Friday, January 22, 2010;
- ii. on a telephonic inquiry by the Commission the Respondent stated that the provisional listing of the Company was approved by it while granting relaxation to the initial listing fee applicable in terms of regulation 32(1) of the Listing Regulations;

- iii. the Commission vide its letter dated January 26, 2010 advised the Respondent to explain its position, as the above-mentioned relaxation appeared to be in violation of existing Listing Regulations;
- iv. in response the Respondent vide its letter February 01, 2010 took a stand that:
- a. since operationalization of ISE in 1992, it has been providing waivers/rebates in the listing fee under a scheme/incentive devised in consultation with the then apex regulator i.e. Corporate Law Authority;
  - b. the said arrangement was followed while believing it not to be in conflict with the regulatory objective/philosophy;
  - c. the relaxation was granted in the best interest of the investors of the northern region having stock market access through ISE;
  - d. the Respondent vide letter dated May 02, 2007 moved a petition to the Commission requesting it to exercise its power conferred under the Ordinance for compulsory listing of certain securities;
  - e. a formal request for insertion of a provision in the Listing Regulations for waiver of listing fee was submitted by the Respondents for the approval of the Commission vide letter dated June 20, 2007 while continuing with its above practice; and
  - f. the proposal regarding insertion of a provision in the Listing Regulations for waiver of listing fee was confused/mixed up with another distinct proposal regarding compulsory listing of securities at ISE under the Ordinance. Both of these proposals are independent in nature having no nexus with each other.
3. The Respondent's response was examined and it was observed that the Respondent has *prima facie* violated Regulation 32(1) of the Listing Regulations and has failed to provide any justifiable cause for the same. Further, the Respondent has attempted to divert the Commission's



attention to another matter that has been delayed solely due to non pursuance by the Respondent itself.

4. It has also been on record that the Respondent failed to provide appropriate rationale/justification and even prove the authenticity of the data in support of the proposals in question. The Commission through its various letters dated October 02, 2007, May 28, 2008, June 26, 2008, July 8, 2008, August 8, 2008 and February 25, 2009 requested ISE to provide further clarifications/ information. However, the ISE has not only failed to provide a satisfactory response to the Commission's repeated reminders but has also consistently failed to furnish the requisite information to the Commission, till date.

5. The Respondent vide letter dated June 20, 2007 had proposed amendments in sub-regulation 17(5) and 17(6) of the Listing Regulations of the Exchange whereby certain exemptions beyond the scope of the Companies Ordinance, 1984 such as relaxation from furnishing of periodic financial statements were suggested to be allowed to the companies "to whom an offer has been made for listing at ISE for trade facilitation purpose". The mere fact that amendments were proposed through insertion of a separate clause in ISE's Listing Regulations rather than through amendments in Listing Regulation 32 (previously Regulation 33) is sufficient to contradict the Respondent stance that these amendments are independent of its proposal regarding compulsory listing of securities for UTS trade facilitation purposes. It is evident that the proposed amendments were envisaged to make listing at the ISE more attractive in continuation of the earlier proposal submitted by the Respondent vide letter dated May 02, 2007, for all such companies that were listed at LSE but not listed at ISE, upon invoking of Section 10 of the Ordinance, which was later also reaffirmed in the contents of Respondent's letter No. DCA/09/395 of February 12, 2010. The said information is sufficient to believe that both the above-stated proposals are not only correlated but also interdependent.

6. Further submission of a proposal for amendments in the Regulations does not in any way absolve the Respondent from ensuring compliance of the existing regulatory framework. Therefore, processing of the provisional listing of the Company while granting relaxation to the



initial listing fee applicable in terms of regulation 32(1) of the Listing Regulations without any legal provision/ regulatory cover, therefore, can not be justified.

7. In view of the foregoing, the response submitted by the Respondent vide its aforementioned letter of February 23, 2010 was found inadequate and therefore, the Respondent was issued the SCN with the advice to show cause in writing within 07 days of issue of the SCN as to why action may not be taken against the Respondent under Section 22 of the Ordinance.

8. In response, the Respondent vide its letter dated March 31, 2010 stated that:


- i. the matter of waiver of initial listing fee to the Company the request for trade facilitation through Unified Trading System and the request of compulsory listing of securities under Section 10 of the Ordinance are inter-reliant and linked ;
- ii. the matter of waiver of initial listing fee to the Company was not taken up in the true and appropriate context by the Respondent and is highly regretted;
- iii. in order to bring as much listing as possible by providing incentives to the new issues in terms of regulation 3(4) of the Listing Regulation the Respondent took a hit on its revenue as it involves no compromise on disclosure requirement, transparency issues and public interest;
- iv. the Respondent was of the view that the said practice of relaxing the initial listing fee was within the bounds of legal framework and the purported violation of regulation 32(1) to the Listing Regulations was unintentional, unknowingly and inadvertent;
- v. it is assured that the Respondent would not provide any further relaxation to any company until and unless the matter is clarified and approved by the Commission; and
- vi. considering the clarification provided by the Respondent, the violation committed by the Respondent may be condoned.



9. The Commission vide letter dated April 02, 2010 invited the Respondent to avail opportunity of hearing if desired but the Respondent vide its letter dated April 08, 2010 intimated that it had comprehensively elucidated its position vide earlier letter dated Mach 31, 2010 and as such no further hearing was needed to amplify its stance on the matter.

10. In view of what has been recorded above and my considering the rationale presented before me in writing, I am of the view that the Respondent has not fulfilled the requirement of regulation 32(1) to the Listing Regulations. However, some extenuating circumstances have emerged from the Respondent's practice of allowing listings which persuaded the Respondent to believe that it had discharged its obligations under the Listing Regulations which it clearly did not for reasons stated above.

11. In this background, I am inclined, on this occasion, to take a lenient view in the matter and will not take any punitive action under Section 22 of the Ordinance. As such I believe that the violation committed by the Respondents was a negligence that could have been avoided through a more conscientious and responsible approach. Therefore, I would direct the Respondent to be careful in future and ensure strict compliance with the Listing Regulations and other securities laws both in letter and spirit to evade any punitive action under law by the Commission. The Respondent is further advised to carry out necessary amendments in the Listing Regulations in terms of section 34(1) of the Ordinance to remove any inconsistencies therein and to provide for a harmonized regulatory framework.

  
**Musarat Jabeen**  
Director (SMD)

***Announced on:***  
***April 27, 2010***  
**Islamabad**