



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

Before The Director (Securities Market Division)
In the matter of Show Cause Notice issued to
Mr. Imran Aslam

Date of First Hearing: April 09, 2010

Present at First Hearing:

Representing Mr. Imran Aslam

- | | |
|---------------------------|-------------------------------------|
| (i) Mr. Salman Akram Raja | Legal Counsel |
| (ii) Mr. Rashid Sadiq | Consultant |
| (iii) Mr. Humayun Bakht | CFO (Shahzad Textile Mills Limited) |

Assisting the Director (SMD)

- | | |
|-----------------------|--------------------|
| (i) Ms. Tayyaba Nisar | Assistant Director |
| (ii) Mr. Umair Zahid | Junior Executive |

Date of Second Hearing: April 22, 2010

Present at Second Hearing:

Representing Mr. Imran Aslam

- | | |
|------------------------|-------------------------------------|
| (i) Mr. Rashid Sadiq | Consultant |
| (ii) Mr. Humayun Bakht | CFO (Shahzad Textile Mills Limited) |

Assisting the Director (SMD)

- | | |
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| (i) Ms. Tayyaba Nisar | Assistant Director |
| (ii) Mr. Umair Zahid | Junior Executive |



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ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice dated March 12, 2010 ("SCN") issued by the Securities and Exchange Commission of Pakistan ("the Commission") under Section 15A of the Securities and Exchange Ordinance, 1969 ("Ordinance") to Mr. Imran Aslam ("the Respondent").
2. The brief facts of the case are that the Respondent is the Chief Executive Officer ("CEO") of Shahzad Textile Mills Limited ("STML") and director of Shaheen Cotton Mills Limited ("SCML"). Both STML and SCML are public limited companies listed on the Karachi Stock Exchange (Guarantee) Limited ("KSE"). During the period from July 30, 2009 to August 24, 2009 ("Period under Review"), SCML sold its entire holding of 2,608,200 shares (19.25% of paid-up capital) of STML at an average price of Rs. 1.48 per share.
3. On perusal of the trading data of the KSE for the Period under Review, it was noted that out of the total sale of 2,608,200 shares of STML by SCML, 2,548,200 shares were purchased by Mr. Irfan Aslam ("IA"). IA purchased 2,148,200 shares of STML from SCML through the Karachi Automated Trading System ("KATS") of KSE from July 30, 2009 to August 21, 2009 and a further 400,000 shares of STML through an off-market cross transaction on August 24, 2009. Both IA and SCML conducted the transactions through the same terminal ID of Arif Habib Limited ("the Brokerage Company"), Member KSE.
4. Furthermore, it was also noted that after the completion of the said transactions with SCML, IA continued to place purchase orders for STML in KATS from August 24, 2009 to September 18, 2009 to a cumulative 447,450 shares, whereas he was able to purchase only 6,325 shares from the market.
5. IA was a beneficial owner of SCML holding a total of 35.39% shares of the same as of September 2009. He also held 15.66% shareholding of STML prior to the above-said purchase of 2,548,200 shares from SCML. IA currently holds 35.41% shares of STML. He is also brother of the Respondent and son of Mr. Pervez Aslam, who is CEO of SCML and a director at STML.



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6. Subsequent to the purchase of STML shares by IA and his placement of purchase orders after the purchase from SCML, the share price of STML soared sharply from Rs. 1.56 per share to Rs. 6.00 per share from September 18, 2009 to October 07, 2009. STML sent a letter to KSE on September 24, 2009 to announce the meeting of Board of Directors to be held on October 05, 2009 at 3:30 p.m. in order to consider the annual financial results of STML for the financial year ended June 30, 2009 ("FY2009"). The same letter was received by KSE on September 25, 2009 and was announced by KSE at 1:13 p.m. The share price on September 24, 2009 opened at Rs. 2.56 per share.
7. STML announced its results on KSE for FY2009 on October 06, 2009 at 9:34 a.m., in which it reported an earning per share ("EPS") of Rs. 2.49, out of which, Rs. 1.28 pertained to the last quarter of the financial year. The EPS was significantly improved compared to the preceding quarter and exceeded that of the total earnings of the previous nine months of FY2009. Furthermore, the financial performance improved materially from the previous financial years where loss per share ("LPS") was reported, as termed below:

Table-1

Year	2007	2008	2009
EPS / (LPS) Rs.	(1.95)	(0.05)	2.49

8. In the same meeting of Board of Directors of STML dated October 05, 2009, the issue of merger between STML and SCML was also discussed. As a result of the said merger, SCML is supposed to be merged into STML, with STML remaining as the surviving entity and is supposed to benefit from synergies in administrative and other operating costs and optimal economic resource mobilization as mentioned in the merger petition of SCML and STML filed in the Lahore High Court.
9. It should be noted that the scrip of STML has a thin trading history on KSE. When seen in this context, the transactions between IA and SCML during the Period under Review were found materially significant. These transactions on KATS constituted 91.12% of the total market turnover in STML scrip in the calendar year 2009. The historical annual volumes and relevant high and low prices for STML are given in the table below:



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Table-2

Year	Total Volume (Shares)	High Price (Rs.)	Low Price (Rs.)
2006	142,500	20.50	11.50
2007	115,000	13.00	3.50
2008	1,000	8.50	6.00
2009	2,357,513	6.00	1.01

10. Based on the significance of the transactions executed between IA and SCML, as compared to normal trading pattern in the scrip of STML and its subsequent announcement of a positive financial result for FY2009, the Commission sought information from the Brokerage Company, including account opening forms along with all its enclosures, the trading details, the financial ledgers, and receipt and payment details for both IA and SCML.
11. On the analysis of the information and documents obtained from the Brokerage Company, it transpired that the Respondent had the sole authority to operate the brokerage account of SCML at the Brokerage Company by way of a SCML Board of Directors' resolution. Moreover, it was also noted that a total payment of Rs. 4,810,000 was made by IA to the Brokerage Company mainly for the purchase of STML shares through the bank account, maintained jointly by IA and the Respondent at MCB Bank Limited, Fortress Stadium Branch, Lahore.
12. The execution of unusual transactions in the scrip of STML between IA and SCML followed by positive financial results announced by STML, in addition to strong family linkages found between IA and the Respondent, prima facie, appeared to be a violation of Section 15A of the Ordinance. Consequently, the SCN dated March 12, 2010 was served on the Respondent to show cause as to why action may not be taken against him under Section 15E (3) of the Ordinance. The Respondent was required to appear in person or through an authorized representative before the undersigned at the Commission's Islamabad Office on April 02, 2010 for a personal hearing. However, due to non-reply of the Respondent to SCN within the stipulated time period of fifteen (15) days, the hearing was re-scheduled to be held on April 06, 2010, which was further changed to April 09, 2010 at the request of the Respondent.



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13. The Respondent submitted the written reply to SCN through Mr. Salman Akram Raja ("Legal Counsel"), which was received on March 31, 2010. The following contentions were raised in the same written reply:
- a. The Legal Counsel denied that the transactions between IA and SCML in the shares of STML were in any way coordinated or carried out in a pre-arranged manner. He stated that the KATS system of KSE is an automatic order matching system without volition of either the buyer or the seller.
 - b. The Legal Counsel submitted that the financial results of STML for FY2009 were already a matter of public knowledge before their announcement on October 06, 2009 because STML had presented significant improvement in its financial performance in the half-yearly results for the period ended December 31, 2008 which was announced in February 2009 when the STML reported profit after tax of Rs. 16.19 million or EPS of Rs. 1.19. He submitted, therefore, the results for the FY2009 were not entirely new or previously unavailable information, but simply a confirmation of STML's positive growth.
 - c. The Legal Counsel asserted that the financial results of STML announced on October 06, 2009 did not result in increase in price of STML shares. He said that the STML share price did not respond to the positive financial performance shown in the half-yearly results for December 31, 2008. He further stated that the price increase of STML shares does not coincide with the result announcement made on October 06, 2009. He said that the STML share price started increasing from September 18, 2009 whereas the results were announced on October 06, 2009. He mentioned that there was noticeable increase in share price of other textile sector companies as well from September 2009. He argued that, therefore, the price increase in STML share was on account of positive circumstances prevailing in the spinning sector of textile industry during the last quarter of year 2009 and first quarter of year 2010.



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- d. The Legal Counsel argued that the Respondent had no knowledge of the financial results of STML for FY2009 prior to the transactions between IA and SCML. He mentioned that the annual audit of STML was ongoing during the period of the said transactions and the auditors had not submitted their final report by 24th August, 2009, the day on which the last of the transactions between IA and SCML took place.
 - e. The Legal Counsel also stated that the SCN did not prove that the Respondent disclosed that information to IA as alleged. He said that SCN gave no account to any correspondence or other proof of communication between the Respondent and IA where the former had passed on the information regarding financial results of STML to the latter.
 - f. The Legal Counsel submitted that the account with MCB Bank Ltd, Fortress Stadium Branch was operated exclusively by IA. Though, the Respondent had been given the authority to operate the said account as a contingency measure to provide for unforeseen events and emergencies, however, he did not make deposit to the said account nor did he monitor payments being made from the said account.
14. On the first hearing held on April 09, 2010, the Legal Counsel along with Mr. Rashid Sadiq ("Consultant") and Mr. Humayun Bakht, Chief Financial Officer ("CFO") of STML appeared before me and made the following submissions:
- (a) The Legal Counsel informed that the transactions conducted by IA and SCML were essentially coordinated based on the fact that SCML was in need of cash to start a unit which was non-operational for several months. Therefore, the directors of SCML decided to dispose off the holding in STML in a Board meeting held on July 04, 2009 and IA showed interest in acquiring the same from SCML upon knowing about the potential sale of STML shares.
 - (b) The Legal Counsel asserted that the Respondent had no specific knowledge of the financial results of STML at the time of the transactions, though he had a general idea about the improvement in the results based on industry circumstances. The Legal



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Counsel further mentioned that the yarn prices had improved considerably in September, 2009 leading the advance in the spinning sector of textile industry and supported his arguments with the share price data provided for certain companies with the Respondent's written reply of March 31, 2010. He argued that the phenomenon of yarn price surge led the advance in the price of STML share, and not the information regarding financial results of STML. He added that there was no correlation found between increase in STML price movement and financial results announced on October 06, 2009.

- (c) The Legal Counsel mentioned that if these transactions had not taken place, the shares of STML held by SCML would have been cancelled in a proposed merger of STML and SCML and would have rendered no value to SCML in that case.

15. Subsequent to the first hearing on April 09, 2010, the Consultant of the Respondent requested, vide letter dated April 19, 2010, for a further opportunity of personal hearing on behalf of the Respondent to make further legal and factual submissions. In response to the request, a second hearing was conducted on April 22, 2010 at the Head Office of the Commission in Islamabad.

16. In the second hearing, which was attended by the Consultant of the Respondent and the CFO of STML, the following verbal submissions were made on behalf of the Respondent:

- (a) The Consultant sought clarification on the subject of the SCN as it was issued under Section 15A of the Ordinance. He argued that the SCN didn't identify which specific violation under sub-sections of Section 15A (2) of the Ordinance was made by the Respondent. He further asserted that Section 15E (3) of the Ordinance is an independent provision which has its offence listed in it and does not require any violation of Section 15A of the Ordinance for its applicability.
- (b) The Consultant argued that Section 15E (3) of the Ordinance does not apply on the Respondent as it requires the alleged insider to pass information to *any other person*, and since IA himself is an insider by virtue of being a beneficial owner in the company



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as defined in Section 15C of the Ordinance, and hence is not *any other person*, therefore, this did not fall in the ambit of Section 15E (3) of the Ordinance. He stated that both the Respondent and IA had equality of information in this matter and neither the parties to the transactions were at an informational disadvantage.

- (c) The Consultant reiterated the assertions made in the first hearing by the Legal Counsel regarding public availability of information regarding financial results of STML and upturn in the spinning industry. He supported his arguments with textile industry research reports and news excerpts on the issue.
- (d) The Consultant asserted that 97% of the shares of SCML and STML are held by the family itself and therefore, the transactions didn't damage the interests of anyone out of the minority shareholders as stated in the SCN. The Consultant further stated that the transactions were conducted out of good faith and for the purpose of long-term holding by IA and there was no intention of earning any illicit profit by selling the shares of STML or to damage or hurt the interest of any investor.
- (e) The Consultant reiterated the assertion made in the first hearing by the Legal Counsel that the Respondent had no idea of the EPS of STML as on the dates when the transactions took place, because the external audit was going on and no one could be definite regarding the final results until audit was completed. Therefore, the Respondent did not communicate any information regarding the financial results to IA in anyway before or during the transactions.

17. Subsequent to the second hearing, the Consultant of the Respondent submitted a reply dated April 28, 2010 containing written form of arguments, which were made in the second hearing. The same were thoroughly reviewed and assessed in relation to the earlier submissions and assertions made on behalf of the Respondent during the course of the complete proceedings as covered above.



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18. Based on the above arguments in both written and verbal form, it is noted that the representatives of the Respondent have admitted a number of points, which were raised in the SCN. The Legal Counsel in the first hearing admitted that the transactions in the shares of STML were conducted between IA and SCML in a coordinated and pre-arranged manner. It was also admitted that the Respondent was operating the brokerage account of SCML singly at the Brokerage Company as authorized by the Board of Directors of SCML. Moreover, it was not denied that the bank account held at MCB Bank Limited, Fortress Stadium Branch, Lahore was jointly owned by IA and the Respondent. Further, in the written as well as verbal submissions, it was also admitted that the Respondent is the brother of IA.
19. It is also pertinent to mention that the arguments presented by the Legal Counsel of the Respondent in the written reply to SCN received on March 31, 2010 and submissions made in subsequent hearings have a clear contradiction. In the above-referenced written response of the Respondent, it was mentioned that these transactions in shares of STML between IA and SCML were normal and in no way could be synchronized. However, contrary to the above written submission, the representatives of the Respondent admitted during the course of hearings, that the transactions between IA and SCML were coordinated and the Respondent was privy to the said transactions in the shares of STML.
20. I have thoroughly analyzed and examined the facts, evidences and documents on record, in addition to the written replies to SCN from the Respondent and further assertions made by the representatives of the Respondent on both the hearings. Consequently, it is necessary to address the following issues raised during the complete course of the proceedings, in order to determine the offence detailed in the SCN.
- (i) *Was the STML financial result for FY2009 inside information?*
 - (ii) *Was the improvement in the textile industry, the basis of price increase in STML shares during the period from September 18, 2009 to October 07, 2009?*
 - (iii) *Was the Respondent aware of the financial results of FY2009 for STML at the time of transactions between IA and SCML?*



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- (iv) Was the information regarding financial results of STML disclosed by the Respondent to IA?
- (v) Was IA an insider person at the time of transactions and was he required to know the information regarding financial results of FY2009 prior to its public disclosure?

The issues listed above are addressed in detail and analyzed seriatim:

21. Was STML financial result for FY2009, the inside information?

21.1 In order to comprehend this issue, it is important to look what constitutes inside information under Section 15B (1) of the Ordinance, mentioned hereunder:

"Information which has not been made public relating, directly or indirectly, to listed securities or one or more issuers and which, if it were made public, would be likely to have an effect on the prices of those listed securities or on the price of related securities."

It is clear from the above sub-section of Section 15B of the Ordinance that the inside information should be material non-public, price-sensitive information which directly or indirectly relates to the listed company. In the above context, material price-sensitive information may *inter alia* include the following:

- (a) Information regarding financial performance and results of a listed company
- (b) Dividend payout and other corporate announcements
- (c) Information relating to a joint-venture, merger or acquisition
- (d) Any material contract entered into or lost, or purchase or sale of significant assets.

21.2 It is clear that the information regarding the financial results of FY2009 directly related to STML and was essentially not known to public before the announcement of the said financial results on October 06, 2009. Furthermore, the thorough review of financial results of FY2009 depicts that these results of STML could not be predicted/forecasted on the basis of historical operational performance as argued by the representatives of the Respondent because, in the last quarter of the FY2009, an increase in the profit after tax of STML was registered mainly due to one time gains and cost savings which were not seen in the previous nine months of FY2009. Moreover, the operational performance in the last



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quarter of FY2009 for STML was dismal and gross profit margin declined to the lowest level from the previous quarters of the same financial year. Therefore, based on the financial results of STML for nine months ended March 31, 2009, the results for the last quarter of FY2009 could not be predicted due to the reasons mentioned above.

21.3 The following table highlights the quarterly performance of STML in FY2009:

Table-3

	Quarter Ended			
	September 30, 2008	December 31, 2008	March 31, 2009	June 30, 2009
Gross Profit - Rs.	30,016,000	40,112,000	21,585,000	12,851,485
Gross Profit Margin	7.41%	12.64%	6.75%	3.60%
Profit/(Loss) After Tax - Rs.	(1,163,000)	16,195,000	1,441,000	17,282,204
Profit After Tax Margin	-0.28%	5.10%	0.45%	4.84%
EPS/(LPS) - Rs.	(0.09)	1.19	0.11	1.28

As evident from data in Table-3, gross profit margin of STML was fluctuating abruptly throughout the FY2009. Therefore, it is clear from the above analysis that the financial results for FY2009, before their announcement on October 06, 2009, could not be forecasted on the basis of operational performance of STML in the previous quarters of FY2009.

22. *Was the improvement in the textile industry, the basis of price increase in STML shares during the period from September 18, 2009 to October 07, 2009?*

22.1 Before assessing the basis of increase in STML share price, it is necessary to understand the price movement in shares of STML. As already mentioned, the share price of STML increased from September 18, 2009 to October 07, 2009. The price of STML shares started increasing immediately after IA stopped placing purchase orders, i.e, on September 18, 2009 and increased again on September 24, 2009 being the first trading day after Eid Holidays. STML dispatched a letter to KSE on September 24, 2009 to announce the Board of Directors meeting in order to consider annual financial results of STML for FY2009 to be held on October 05, 2009 at 3:30 PM. The Board meeting notification was announced by KSE on September 25, 2009 at 1:13 p.m. The following table shows the price movement in the shares of STML in detail:



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Table-4

Day	Date	Opening Price (Rs.)	Closing Price (Rs.)	High Price (Rs.)	Low Price (Rs.)	Price Change (Rs.)	Volume (Shares)
1.	Sep 18, 2009	1.56	2.56	2.56	2.56	+1.00	23,188
2.	Sep 21, 2009	EID HOLIDAYS					
3.	Sep 22, 2009	EID HOLIDAYS					
4.	Sep 23, 2009	EID HOLIDAYS					
5.	Sep 24, 2009	2.56	3.56	3.56	3.55	+1.00	12,812
6.	Sep 25, 2009	3.56	4.50	4.50	4.50	+0.94	690
7.	Sep 28, 2009	4.50	3.50	5.50	3.50	-1.00	43
8.	Sep 29, 2009	3.50	3.50	-	-	-	-
9.	Sep 30, 2009	3.50	3.75	3.75	2.51	+0.25	1,001
10.	Oct 01, 2009	3.75	3.01	3.01	3.01	-0.74	1
11.	Oct 02, 2009	3.01	3.60	4.01	2.02	+0.59	8,734
12.	Oct 05, 2009	3.60	4.50	4.60	3.51	+0.90	1,041
13.	Oct 06, 2009	4.50	5.50	5.50	5.50	+1.00	7,500
14.	Oct 07, 2009	5.50	6.00	6.50	6.00	+0.50	6,627

22.2 Moving towards the issue of the basis of STML's price increase, it requires the analysis of the complete textile sector in addition to specific performance of spinning sector during the period in question, because the representatives of the Respondent have repeatedly argued that the increase in share price of STML was because of the general increase in the shares of textile spinning sector. In addition to the above analysis, general increase in the stock market as benchmarked with KSE 100 shares index ("KSE-100"), in the same period is also assessed to determine the overall market performance (KSE-100 Index is a key indicator of the stock market activity and movement over the KSE). The following table presents the analysis to assess the performance of KSE-100 Index, Textile Composite Sector, Textile Weaving Sector, Textile Spinning Sector and STML for the months of August 2009 to October 2009 along with the performance specifically in period under question i.e. September 18, 2009 to October 07, 2009:

Table-5

	August 2009	September 2009	October 2009	September 18, 2009 to October 07, 2009
KSE-100	12.37%	6.61%	-1.61%	4.24%
Textile Composite	3.51%	4.40%	-1.85%	2.97%
Textile Spinning	13.80%	9.72%	2.61%	3.65%
Textile Weaving	14.70%	23.82%	0.66%	15.17%
STML	-6.00%	165.96%	7.20%	284.61%



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22.3 The information in Table-5 above ascertains that the price of STML shares had no correlation with any of the benchmark listed there in wider market or in the textile sector specifically. Since, the price increase in STML shares had been preceded by historic trading activity, being created by the IA and SCML and subsequent orders placed by IA in the scrip of STML; therefore, the increase in the price of STML shares may not be attributed to the performance of textile industry over KSE.

22.4 In the written replies as well as during the course of both hearings, the representatives of the Respondent strongly argued that the financial results of STML were already anticipated by the market and had no effect on the price of scrip on their announcement. In this regard, I would like to highlight a fact which clearly rebuts the aforesaid argument of the Respondent. More recently, STML's financial results for nine months ended March 31, 2010 were announced on KSE on April 28, 2010 which were seen generally positive. The improved results announcement caused the price of STML share to move up from Rs. 4.99 to Rs. 8.17 (increase of 63%) in just 4 trading days from April 29, 2010 to May 04, 2010 with trading volume making up over 80% of the total volume in the scrip of STML in the calendar year 2010 so far, making it reach its highest price in more than a year. This fact shows that the financial results of a company do have effect on the share price of the company.

23. *Was the Respondent aware of the financial results of FY2009 for STML at the time of transactions between IA and SCML?*

23.1 The financial year for STML ended on June 30, 2009, whereas the transactions between IA and SCML started after one month, on July 30, 2009. Since the Respondent was CEO of STML, being the highest level officer in the company, it remains his responsibility at all times to manage and have a clear view on the operational and financial position and performance of STML to discharge his professional responsibilities effectively under the usual course of business. However, it would have been adverse for STML, if the Respondent was ignorant of the affairs of STML including the financial and operational performance. Therefore, under normal circumstances, the Respondent as CEO of STML must have knowledge regarding the financial performance including any unexpected change in the financial position of STML, on frequent basis. To further emphasize the



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knowledge of the Respondent regarding financial performance of STML, it is clear that preparation of financial statements is the responsibility of the management and auditors are only required to form an opinion on the true and fair presentation of those financial statements, therefore, it is evident that the Respondent as CEO of STML had prior knowledge of the financial affairs of STML.

24. Was the information regarding financial results of STML disclosed by the Respondent to IA?

24.1 In order to determine that whether the information was disclosed by the Respondent to IA, it would be useful to establish the strong family linkage of IA with top management of SCML and STML along with his shareholding in the said companies as of September 2009.

Table-6

	Relationship with Respondent	Position in STML	Position in SCML
Mr. Irfan Aslam (IA)	Brother	34.51% Shareholder*	35.39% Shareholder
Mr. Pervez Aslam	Father	Director, 4.77% Shareholder	CEO, 9.69% Shareholder
Respondent	-	CEO, 5.45% Shareholder	Director, 4.42% Shareholder

*IA held 15.66% shares of STML prior to purchasing 18.80% shareholding from SCML and further 6,325 shares of STML from the market.

24.2 From the facts of the case mentioned above, it stands established that the Respondent being the CEO of STML was an insider person and hence, through his dominant position in STML, he had information regarding financial performance of STML. It is also established that the trading in the shares of STML by IA and SCML in the Period under Review was substantially different from the trading history of the scrip and it constituted 91.12% of the total volume in the scrip of STML in the calendar 2009. Moreover, the close relationship of the Respondent with IA, being his real brother and the pre-arranged and synchronized manner of the transactions in the shares of STML also indicates that the information was disclosed to IA by the Respondent. Moreover, the Respondent was



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selling the shares of STML from SCML account to IA as he was authorized by SCML, and the funds for the purchase of STML shares by IA were arranged from the bank account at MCB Bank Limited, which was jointly held by the Respondent and IA. Since IA had not traded so extensively in the shares of STML before the transactions with SCML, it clearly shows that IA was purchasing the STML shares in a pre-arranged manner only on account or in furtherance of some specific information regarding STML that was not in the public domain, which was the information regarding positive financial results for FY2009.

24.3 Since, IA was not an officer of SCML and STML; neither was on the Board of Directors of the said companies, therefore, as a simple shareholder IA would not have had access to confidential information regarding the financial performance of the either STML or SCML directly. Furthermore, as already admitted by the Legal Counsel of the Respondent, during the course of first hearing, that the transactions were coordinated as IA consistently placed purchase orders to buy STML shares prior to the sale order by SCML, with difference of a few seconds. This clearly indicates IA had inside information prior to the transactions based on which he placed orders to purchase STML shares from SCML. The table below highlights the trading pattern of IA and SCML in the transactions in STML shares:

Table-7

Number of Trading Days	16
Total Shares sold by SCML	2,608,200
Shares purchased by IA from SCML	2,548,200
Total Transactions of SCML on KATS	62
Matched Transactions between SCML and IA on KATS	60
No. of times Orders Placed First by IA on KATS	60

24.4 To determine the timing of orders placement in KATS, the following table highlights a sample of ten transactions to indicate the fact that purchase orders of IA were consistently placed before the sale orders of SCML with a very short interval:



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Table-8

Date	Buyer	Buy Order Time	Seller	Sale Order Time	Order Size (Shares)	Terminal ID
July 30, 2009	IA	14:52:17	SCML	14:52:41	23,000	MEM05003
July 30, 2009	IA	14:53:06	SCML	14:53:21	55,000	MEM05003
July 30, 2009	IA	14:53:48	SCML	14:54:02	15,000	MEM05003
July 31, 2009	IA	16:23:14	SCML	16:23:26	25,000	MEM05003
July 31, 2009	IA	16:24:50	SCML	16:24:59	25,000	MEM05003
July 31, 2009	IA	16:25:15	SCML	16:25:23	25,000	MEM05003
Aug 04, 2009	IA	12:55:48	SCML	12:55:59	25,000	MEM05003
Aug 04, 2009	IA	12:57:01	SCML	12:57:09	25,000	MEM05003
Aug 04, 2009	IA	12:57:38	SCML	12:57:45	25,000	MEM05003
Aug 04, 2009	IA	12:59:32	SCML	12:59:40	15,000	MEM05003

24.5 Since IA was already holding shares of STML prior to the purchase from SCML, his decision to increase the holding, just prior to financial results announcement of STML indicates that he was in possession of the inside information regarding STML. It is also worth mentioning that there was no significant information regarding STML prevailing in the market during the time, those transactions between IA and SCML took place. Additionally, there was no significant trading by any other outside person in STML shares during the time of the said transactions as it is a thinly traded scrip in the market. Moreover, IA's intent to place purchase orders for STML shares to a total of 447,450 shares in the period from August 24, 2009 to September 18, 2009 after the completion of the transactions with SCML but before the announcement of the financial results of STML further establishes that he had a strong stimulus based on the prior information of financial performance of STML provided to him by the Respondent to buy more shares of STML even after completing the purchase of 2,548,200 shares from SCML.

25. Was IA an insider person at the time of transactions and was he required to know the information regarding financial results of FY2009 prior to their public disclosure?

25.1 The issue highlighted requires assessing whether IA was indeed an insider at the time of the purchase of STML shares from SCML. Section 15C (1) (e) of the Ordinance as reproduced below states an insider to be:

"Any natural person holding, directly or indirectly, ten per cent or more shares of an issuer."



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25.2 On account of the above-mentioned sub-section of Section 15C of the Ordinance, IA was an insider of STML as he held 15.66% of the shareholding prior to further purchase of shares. It should, however, be noted that Section 15C of the Ordinance is a deeming clause. It is pointed out that all insiders enlisted in Section 15C of the Ordinance do not necessarily possess inside information at all times nor do they have the right or need to have all the information. Inside information being confidential in nature is confined to the knowledge of those who are required by law to have that knowledge. Inside information as long as it is confidential is required to be divulged on "need to know basis". The insiders will come across the information when they need to know i.e. when the law requires that they be told for certain approval. The person in possession of this confidential information must take proper care and caution so that this confidentiality is neither compromised nor breached. It would be right to suggest that person in possession of inside information holds that information as a trust. As in the instant case, the Respondent in his capacity as the CEO of STML was in a position to have access to and knowledge about the positive financial results of STML, but IA in his capacity as a shareholder was not required under the law to possess the information at that relevant time. The trading pattern of STML shares during the Period under Review provides ample evidence that this trading was being conducted on inside information. As discussed above, this inside information in the facts and circumstances of the case was the positive financial results of STML for FY2009. Therefore, the issue of IA's requirement to possess inside information as a shareholder needs to be looked thoroughly along with the argument made by the Consultant of the Respondent that under Section 15E (3) of the Ordinance, the Respondent, being an insider had to disclose inside information to *any other person*, and not to an insider, for contravention to hold. The issue can be addressed by considering Section 15E (3) of the Ordinance which states the following.

"Where an insider person discloses inside information to any other person who is not required to possess such information for any reason [emphasis added], the insider person shall be liable to fine, to be imposed by the Commission, which may extend to thirty million rupees."



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25.3 It clearly transpires from above that Section 15E (3) of the Ordinance is attracted when an inside person discloses inside information to any other person who is not required to possess such information for any reason. This sub-section implies that inside information is disclosed to another person who is not required under the law or normal course of business to possess such information. The contravention mentioned in Section 15E (3) of the Ordinance is primarily concerned with the disclosure of inside information by an insider to any other person not required to possess the said information. Despite the fact that IA is deemed to be an insider due to holding of more than 10% shares of STML, but his status as a shareholder does not mean that he was required under the law to possess information regarding the financial performance of STML prior to its public announcement. Under normal circumstances, shareholders are not required to possess information regarding the financial results of the company prior to their public dissemination. IA was not an officer of either STML or SCML, nor was he on the Board of Directors of either company at the time of the transactions and to this date. In this view of the matter, it stands established that IA as a shareholder of STML is not required to possess the information regarding the financial position of the company before its public announcement in accordance with the law. However, the facts clearly establish that IA gained the inside information from his brother i.e. the Respondent who was the CEO of STML.

26. Furthermore, in order to clarify the concern raised by the Consultant of the Respondent in the second hearing as well as in the written response dated April 28, 2010 regarding the subject of SCN which mentioned Section 15A of the Ordinance whereas, the Consultant argued that Section 15E (3) of the Ordinance invoked against the Respondent is an independent clause and does not require any violation of Section 15A of the Ordinance for its applicability. To elaborate the issue, it is clearly mentioned in Paragraph 14 of the SCN that the violation was determined under Section 15E (3) of the Ordinance and elsewhere in the SCN, the substance clearly shows that the charge was mentioned against Respondent for passing on/disclosing the inside information to IA.



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27. The Consultant of the Respondent raised an additional argument in the reply dated April 28, 2010 that the SCN issued to IA had taken contradictory stance regarding position of IA wherein the Consultant argued that at first, IA was said to receive STML's financial information from the Respondent and later in paragraph 12 of the SCN issued to IA, it was mentioned that IA was *in possession of financial information* regarding STML. To determine the fact of the position, it is necessary to consider the said paragraph of SCN issued to IA which states:

"..., being one of the sponsors and closely related with the management of STML, you were in possession of positive financial information regarding STML..."

It is clear from the paragraph 12 of SCN served on IA as reproduced above that the stance taken for IA was not in any way contradictory, because he possessed the information regarding financial results of STML based on the fact that he was *closely related with the management of STML* and material information regarding financial results of STML were passed to IA by the Respondent. It should also be noted that the complete substance of the SCN should be read and assessed as a whole and not in isolation to any statement made therein. The complete substance of the SCN issued to IA clearly shows that there is no contradiction therein.

28. With reference to the issue of merger between STML and SCML, it was admitted by the Legal Counsel of the Respondent in the first hearing that if shares of STML had not been sold by SCML, they would have been cancelled in a merger between SCML and STML, and which could have an impact on the shareholding structure of STML. There is no doubt that IA, by purchasing the STML shares from SCML, benefited from the improved financial fundamentals of STML shown in the last quarter of FY2009 and other financial results announced by STML in financial year 2010, as a shareholder. Further, after the merger between SCML and STML completes, STML would become a larger entity having more resources, which would also be of advantage to IA through his major shareholding in the combined entity emerging after the merger.



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29. In order to address the argument of Consultant of the Respondent regarding shareholding structure of SCML, the pattern of shareholding needs to be looked at, which was reported by SCML in its FY2009 financial statements. The shareholding pattern depicted that directors and their immediate families, the associated undertakings, and major shareholders including the IA collectively owned over 65% of the shareholding of the company and remaining shareholding amounting to 30.20% was categorized under the heading of *General Public* and another 3.98% shareholding was categorized as *Modaraba and Mutual Funds*. Therefore, it may not be the case, as argued by the Consultant of the Respondent that 97% shares of SCML are held by the sponsors.
30. It is pertinent to mention here that the Respondent, being in his capacity as the CEO of STML and a director at SCML, has a fiduciary duty to the STML and its shareholders and to the shareholders of SCML that he is required to exercise care consistently to maximize the value to all of the shareholders of both companies. He should also discharge his responsibilities diligently without exception in any matter including his position as an insider holding confidential information regarding both STML and SCML.
31. In view of the foregoing, it is established that the Respondent failed to comply with the provision of Section 15E (3) of the Ordinance by passing the information regarding the financial results of STML for FY2009 to IA and based on the information, IA traded in the shares of STML. Therefore, on the basis of the facts and evidences mentioned above, in exercise of the powers under Section 15E (3) of the Ordinance, I hereby impose on the Respondent a penalty of Rs. 3,000,000/- (Rupees Three Million Only), for passing on/disclosing the inside information to IA regarding financial results of STML.
32. 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 the copy of the deposit challan to the undersigned.



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33. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Imran Inayat Butt
Director
Securities Market Division

Announced on July 23, 2010
Islamabad.