



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

Before the Director (Securities Market Division)

In the matter of Show Cause Notice issued to

Mr. Jawad Ahmed, Treasury Manager, Treet Corporation Limited

Date of Hearing:

May 16, 2011

Present at Hearing:

Representing Mr. Jawad Ahmed

(i)	Mr. Salman Zaheer Khan	Legal Counsel
(ii)	Mr. Hassan Nizami	Legal Counsel

Assisting the Director (SMD)

(i)	Mr. Syed Asad Haider	Joint Director
(ii)	Mr. Adnan Ahmed	Deputy Director
(iii)	Mr. Umair Zahid	Assistant Director

ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. MSW/SMD-SOUTH/2011/150 dated April 12, 2011 (**the "SCN"**) issued by the Securities and Exchange Commission of Pakistan (**the "Commission"**) under Section 15E of the Securities and Exchange Ordinance, 1969 (**the "Ordinance"**) to Mr. Jawad Ahmed (**the "Respondent"**).
2. The brief facts of the case are that Treet Corporation Limited (**"TREET"**) is a public limited company and its shares are listed at Karachi Stock Exchange (Guarantee) Limited (**"KSE"**), Lahore Stock Exchange (Guarantee) Limited (**"LSE"**) and Islamabad Stock Exchange (Guarantee) Limited (**"ISE"**) and the Respondent is a Treasury Manager of TREET.
3. On perusal of the trading data of Karachi Automated Trading System (**"KATS"**) of KSE from July 2009 to March 2010 (**the "Review Period"**), it was observed that share price of TREET witnessed significant increase twice during the Review Period. The initial increase in price from Rs. 318 to Rs. 590 i.e. 85.48% was witnessed from July 24, 2009 to August 17, 2009 in 16 trading sessions (**"First Trading Session"**). The second increase in share price of TREET from

Rs. 276.82 to Rs. 681.93 i.e. 146.3% was witnessed from January 26, 2010 to February 24, 2010 in 21 trading sessions (“**Second Trading Session**”)

4. The review of historical price/volume data of TREET showed that it is a thinly traded scrip. The trading summary of the scrip over a period of three years from 2007 to 2009 is illustrated in the following table:

TABLE-I


Year	Total Volume (Shares)	Average Daily Volume (Shares)	High Price (Rs)	Low Price (Rs)
2007	296,900	1,212	348.00	195.00
2008	63,300	258	305.50	215.00
2009	30,880	126	609.00	131.50

Note: figures are based on calendar year.

5. The analysis of trading data of TREET revealed that during the First Trading Session, a total of 9,107 shares of TREET were traded at KSE, out of which the Respondent purchased 6,484 shares (71.2% of total market volume) at an average price of Rs. 448.91 per shares. Subsequently, on August 19, 2009, the Respondent sold 6,000 shares of TREET to the Treet Employee Provident Fund, Treet Employee Superannuation Fund, Treet Employee Gratuity Fund and Treet Employee Service Fund (**the “Funds”**) at an average selling price of Rs. 587.60 per share in the following manner:

Date	Type of Funds	Qty
19-Aug-09	Employee Gratuity Fund	1,500
19-Aug-09	Employee Service Fund	1,500
19-Aug-09	Employee Provident Fund	1,500
19-Aug-09	Employee Superannuation Fund	1,500
	Total	6,000

6. It was also observed from the records/information provided by TREET that the board of trustees of the Funds (that was common for the Funds) decided in a meeting dated September 30, 2008 to delegate certain powers, including the powers to make and ratify investment decisions and determine investment policies, to an investment advisory committee consisting of two trustees (Mr. Amir Zia and the Respondent) and two senior executives (Mr. Ayaz Ahmed and Mr. Sohail Habib). Furthermore, the investment advisory committee in its meeting held on October 06, 2008 delegated the powers to make investment decisions regarding investment in listed equities to the Respondent and authorized him to issue instructions to the stock brokers and to operate CDC

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accounts of the Funds. Accordingly, it was *prima facie* established that the Respondent was primarily responsible for taking all the investments decisions of the Funds.

7. It is apparent from perusal of the trading data relating to the First Trading Session that the share price of TREET was primarily increased because of the Respondent's buying as mentioned in paragraph 5 above. After the share price increased significantly, the Respondent, while using his position as Trustee, sold his almost entire holding to the Funds and realized an estimated gain of Rs. 832,140.
8. On October 26, 2009, TREET announced its financial results for the 1st Quarter ended September 30, 2009 which exhibited its positive financial outlook, declaring Earnings Per Share ("EPS") of Rs. 24.84 that was considerably improved as compared to EPS of Rs. 2.82 for the corresponding period in the previous year. The improvement in the bottom-line earning growth of the company had resulted due to improvement in sales mix, reduction in material costs, better inventory management and capital gains on short term investments. However, TREET did not announce any payout. Later on, a meeting of Board of Directors (the "Board") of TREET was held on February 02, 2010 to consider financial position of the Company. The Board in the said meeting recommended an interim cash dividend of 50%, i.e. Rs. 5/- per share in addition to bonus issue of 900% i.e. issue of 9 shares for every 1 share already held. The said information had material impact on the share price of TREET which increased from Rs. 328.27 to Rs. 681.93 from February 03, 2010 to February 24, 2010. The historical payouts and EPS of TREET for the financial years 2007 to 2009 are described below:

TABLE-III

Year	2007	2008	2009
EPS / (LPS)	21.20*	5.49*	(11.64)*
Dividend	20%	Nil	Nil
Bonus	Nil	Nil	Nil

* Consolidated result, LPS: Loss per Share

9. The trading data of Second Trading Session shows that Mr. Mushtaq Ahmed ("Mr. Ahmed") who is the Respondent's father bought 7,050 shares of TREET on January 29, 2010 at an average rate of Rs. 295.56 before the aforesaid corporate announcement and sold 7,000 shares on February 11, 2010 after corporate announcement, thereby materializing a gain of Rs. 1,006,600.



10. Mr. Ahmed's CDC Account Activity Report of TREET stated nil opening balance as of July 01, 2009 with no activity reported before the trading conducted as mentioned in the preceding paragraph 9. This *prima facie* evidenced the fact that trading in TREET shares in the account of Mr. Ahmed was done to gain pecuniary benefit from the pending corporate announcement relating to interim cash dividend and bonus issue.
11. Mr. Naeem Qureshi ("**Mr. Qureshi**"), who referred the Respondent as his friend in his account opening form, opened his trading account with KASB Securities Limited on January 25, 2010, just eight days before the Board meeting of TREET. He purchased 7,246 shares of TREET prior to aforesaid corporate announcement relating to cash dividend and bonus issue and disposed of these shares after announcement, thereby realizing substantial gain of Rs. 1,314,000 in a short span of time. It is pertinent to mention here that we have not found any other trading by Mr. Qureshi, which *prima facie* established that he opened his trading account only to trade in the shares of TREET.
12. In view of the facts relating to the First Trading Session, it was *prima facie* established that the Respondent was involved in Insider Trading by virtue of the material 'inside information' relating to shares of TREET as being its 'Insider'. With regard to the Second Trading Session, it was *prima facie* established that by virtue of his official position in TREET, the Respondent indirectly traded in TREET shares through the accounts of his father Mr. Ahmed and his friend Mr. Qureshi.
13. Accordingly, the Commission took cognizance of the matter and issued SCN to the Respondent calling upon him to explain as to why action may not be taken against him under Section 15E of the Ordinance. The Respondent was required to appear at the Commission's Islamabad Office on May 02, 2011 for a personal hearing. The Respondent vide letter dated April 27, 2011 requested this office to extend the date of submission of written reply to SCN for two weeks and also requested that the date of hearing be fixed after the submission of written reply. The said request of the Respondent was acceded to.
14. The Respondent submitted the written reply dated May 11, 2011 a summary of which is stated below:



(i) **Factual Background:**

- a) That the board of trustee of the Funds had decided to delegate certain powers and in their meeting of September 30, 2008, the board of trustees constituted an Investment Advisory Committee including the Respondent. The Respondent was authorized to make day to day decisions regarding investments of the Funds. He made a personal decision to invest in the shares of TREET based on the performance of TREET as reflected in the published financial statements of TREET. At the time the Respondent purchased the shares of TREET, he had no intention to sell them to the Funds. However, while the Respondent firmly believed that TREET would be doing very well in the long run. The Respondent did not have the financial power to hold the shares for long term and had to sell his shares soon after purchase. The Respondent decided that the Funds should invest in the shares of TREET because he continued to believe that they would appreciate even more in value with passage of time. Therefore, the Respondent sold the 6,000 shares to the Funds on August 19, 2009 in the best interest of the Funds.
- b) It was submitted that the allegation raised in the Notice regarding Respondent's association with the trading of Mr. Mushtaq Ahmed and Mr. Naeem Qureshi has no proper factual or legal basis. It was further submitted that the Respondent was not a member of the Board of TREET and therefore the Respondent was not in a position to influence the decisions of the Board nor did he have any prior knowledge about such deliberations or decisions. It was reiterated that the position the Respondent held at TREET was categorized as a part of the junior management and at no relevant time was he privy to any price sensitive information vis-à-vis the securities of TREET.

(ii) **Preliminary Submissions:**

- a) The allegations of insider trading contained in the SCN against the Respondent are based on conjectures and surmises and no case of violation of any provision of the Ordinance or any other law has been made out against the Respondent. The Notice fails to mention under what sub-section of section 15A of the Ordinance, the Respondent alleged to be an insider. The Notice, however, fails to mention the particulars of the inside information that the Respondent possessed and which have had an impact on the price of the securities of TREET.



- b) That for Section 15 B of the Ordinance to take effect it is necessary to prove that information related to listed securities or issuer and had not been made public or if it were made public it would have effect the price of the listed security. No such proof has been provided by the Commission to attract the provisions of Section 15 B of the Ordinance.
- c) That the notice fails to mention the particulars of inside information that was possessed by the Respondent.
- d) That the function of the Ordinance is to regulate and not stop insiders from trading in a bona fide manner. That for application of Section 15 A of the Ordinance it is essential for the investigating authority, i.e. Commission, to prove that inside knew that the information was price sensitive and was not generally known and the Respondent dealt with it nevertheless.
- e) That the Respondent is not a member of the Board and it is inapt to allege that he was privy to the information/decision of the Board to declare dividend. That the notice of the unscheduled Board meeting was sent to KSE on January 26, 2010 which could have resulted in any person to trade on speculation on possibility of interim dividend.
- f) The Notice also fails to provide any evidence or proof that the Respondent passed on any inside information to either Mr. Mushtaq Ahmad or Mr. Naeem Qureshi or that they traded in shares of TREET on Respondent behalf or for his benefit. The entire premise of the notice is based on circumstantial facts and speculation on the part of investigating authority.

(iii) **Para-wise comments to the SCN:**

- a) The Respondent was indeed a member of the Committee and was also empowered to make day-to-day decisions regarding the investment of the Funds.
- b) The purchase of the shares of TREET by the Funds was also a *bona fide* investment decision made on the basis of good performance of TREET. The authority to invest in shares on behalf of the Fund was granted to Respondent by the Board of Trustees.



- c) The contents of the paragraph 7 of SCN are denied in totally as being a Trustee of the Fund and a member of the Committee does not give him any inside information regarding TREET or its shares and the Respondent is not and cannot be considered as, an insider vis-à-vis TREET or trading in TREET's shares by virtue of holding these positions. The Notice fails to mention the particulars of the information that the Respondent allegedly possessed and which would have had an impact on the price of the securities of the TREET in the First Trading Session.
- d) The Respondent had no association with the decision of his father, Mr. Mushtaq Ahmad to purchase the shares of TREET. The Respondent had no prior knowledge of any deliberation or decision of the Board regarding issuance of dividends, particularly, since the decision was not taken by the Board until February 2, 2010. Notice of the proposed Board meeting of February 02, 2010 was issued to KSE on January 26, 2010 with the ostensible purpose to consider the financial position of TREET. Since it was an unscheduled Board meeting, any person, including the Respondent father, could have speculated on the basis of this notice, that issuance of interim dividend was going to be considered in the proposed Board meeting. Therefore, this can hardly be considered confidential information.
- e) The fact that Mr. Naeem Qureshi traded only in the shares of TREET in no way establishes that he had any inside information with regards to any corporate announcement , let alone that he received any such information from the Respondent.
- f) The contents of the paragraph 14 of SCN are denied of as the Notice has failed to establish any evidence against the Respondent with regard to the allegation of contravention of Section 15A of the Ordinance. It is reiterated that the acquisition of the shares of the TREET by Funds in the First Trading Session was a *bona fide* transaction, properly disclosed to the Committee. Furthermore, the Notice fails to mention the particulars of any information that the Respondent possessed and which would have had an impact on the price of the securities of TREET during the First Trading Session. With regards to the Second Trading Session, the Notice has failed to establish that the Respondent possessed any information with regards to Board's deliberation or decision to issue dividends. It has also failed to establish that Mr. Ahmed or Mr. Qureshi invested in the shares of TREET otherwise than on mere speculation or on my behalf.



15. The matter was fixed for hearing on May 16, 2011 at the Commission's Islamabad Office. On the date of hearing, Mr. Salman Zaheer Khan and Mr. Hassan Nizami ("**Legal Counsels**") appeared before undersigned on behalf of the Respondent. The contentions raised by the Legal Counsels, during the course of hearing and as well as in subsequent written statement submitted on May 25, 2011 are enumerated as follows:

- i. The arguments of the Legal Counsels were anchored around the assertion that the SCN fails to mention the particulars of information that the Respondent possessed and which would have had an impact on the price of TREET scrip during the First Trading Session. In addition, SCN does not specifically mention which provision of Section 15A is contravened.
- ii. The Legal Counsels accepted that the Respondent had the authority to make investment decisions regarding the investment of Funds on the purchase date when the Respondent bought TREET shares. However, the allegation by the Commission that the Respondent has 'inside information' prior to dealing with the shares of TREET is incorrect and the same has not been alleged by the Commission.
- iii. It was reiterated by the Legal Counsels that at the time when the shares of TREET were bought by the Respondent, he had no intention of selling them however, because he did not possess the financial power to hold the said scrip he sold it to the Funds. The Legal Counsels also asserted that even outsiders had access to the financial information of TREET shares thus the Respondent was in no better position to deal in the shares based on some inside information as alleged by the Commission.
- iv. The Legal Counsels argued that in the Second Trading Session, the Respondent does not qualify as an insider because he could not have any idea about the outcome of the Board meeting. The Board meeting was extraordinary and this could have created speculation in the market. The Legal Counsels argued that the Respondent was part of the junior management of TREET and it was not possible for him to be privy to the decisions of the Board of TREET. Accordingly, the Legal Counsels asserted that the allegation that such information was used to deal indirectly through the accounts of his father and friend was mere conjecture.



- v. The Legal Counsels asserted that the Respondent had no association with the trading decisions of his father and friend and such an allegation is not substantiated with any evidence.

16. I have perused the record in addition to the written reply filed by the Respondent and have duly considered submissions made by the Legal Counsels of the Respondent during the course of the hearing. Accordingly, the same are addressed below, in seriatim:

- i. The argument that the SCN should be withdrawn as it fails to mention the particular clause of Section 15A of the Ordinance that has been violated cannot be accepted. The plain reading of the SCN evidences that at paragraph 14 of the SCN the pertinent portion of the Section 15A of the Ordinance is replicated. Additionally, the SCN clearly stipulates the offences committed by the Respondent in relation to the First Trading Session and Second Trading Session.
- ii. The Respondent in his written reply and the Legal Counsels in their arguments asserted that for the purposes of the alleged contraventions regarding the First Trading Session, the Respondent is neither an 'insider' in terms of Section 15C of the Ordinance and nor did he have any 'inside information' as defined in Section 15B of the Ordinance. In this regard, this forum would refer to the statement of the Respondent that 'he was authorized to make day to day decisions regarding the investments of the Funds. Accordingly, it is clear that it was only the Respondent who knew of his own decision to invest in the scrip of TREET which was price sensitive non-public information as when the Respondent purchased the shares it had a positive impact on the price as stated in the SCN and in preceding paragraphs of this order. Accordingly, the Respondent falls within the scope and meaning of 'insider' as defined in Section 15C (1) (g) of the Ordinance and the information possessed only by him to invest in the shares of TREET was 'inside information' within the ambit of Section 15B (1) (a) of the Ordinance. For convenience the said Sections are replicated below:

15 B. -Inside information.

(1) The expression "inside information" means, -

(a) 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;

15. C. Insiders.-(1) Insiders shall include,-

(a) to (f).....

(g) any person obtaining inside information as part of his employment or when discharging his usual duties in an official capacity, or in any other way relating to work performed under contract of employment or otherwise;(emphasis added)

- iii. The Respondent in his written reply and the Legal Counsels during the hearing asserted that the Respondent did not have the financial power to hold the shares for a long term; therefore he sold the shares soon after acquisition. It is noted with grave concern that this statement is untrue as the facts present a different picture. The record revealed that the Respondent after offloading his shares of TREET to the Funds on August 19, 2009, further bought 33,403 shares of ZIL Limited at an average rate of Rs. 65.97 worth Rs. 2.2 million during the period from August 31, 2009 to September 10, 2009. It is pertinent to mention that Respondent did not withdraw the funds from his account being maintained with Al-Haq Securities (Private) Limited, Member LSE, instead he made further payment of Rs. 600,000/- on September 16, 2009. This establishes that the Respondents action of buying shares of TREET was with the intention to sell them to the Funds and after obtaining a profit from this transaction further invest the proceeds to gain pecuniary advantage at the cost of the Funds that had to purchase the said shares at a much higher price from the Respondent due to his trading. This also nullifies the argument of the Respondent that he had no intention of selling TREET shares to the Funds when he was purchasing them.
- iv. It is additionally observed by this forum that the Respondent was a trustee of the Funds and by virtue of this position he was delegated the power to make investments on behalf of the Funds. In this regard it is noted that the Respondent has made gain during the First Trading Session at the cost of Funds which may be in violation of policy of the Company or the Funds or the law governing of such trusts. However, this is not the forum to adjudicate upon such a matter. Accordingly, TREET is advised to look into this aspect and take appropriate steps as it may please.



- v. The Respondent, in his reply to SCN, claimed that investment in TREET was a bona fide decision based on good performance of TREET as reflected in the published financial statements of TREET. Nevertheless, the Respondent after having purchased shares of TREET then sold these to Funds thereby realizing personal gains in a short period of time. Accordingly claim of Respondent with respect to *bona fide* investment decision is not true.
- vi. I have perused the record in detail and heard the arguments presented by the Legal Counsels regarding the Second Trading Session. There is no doubt that *prima facie* it was established that the Respondent's father Mr. Ahmed and Mr. Qureshi (who claimed the Respondent to be his friend) traded in the shares of TREET based on information of declaration of interim cash dividend. Since both these individuals were linked/associated with the Respondent and had not dealt actively in shares before the Second Trading Session, it was *prima facie* established that the Respondent being an 'insider' as defined in Section 15C (1) (g) of the Ordinance had dealt indirectly through their accounts.
- vii. Irrespective of the facts, it was argued by the Legal Counsels that the information of the Board meeting was in public domain to consider the financial results of the TREET on January 26, 2010. Accordingly, an essential ingredient to prove the offence that such information was not in public domain is absent as the trading of Mr. Ahmed and Mr. Qureshi is after the time the notice was sent to KSE about the Board meeting to discuss the financial position of TREET. Further, the contention of the Legal Counsels that the Respondent had no prior knowledge of any deliberation or decision of the Board regarding issuance of dividends, particularly, since he is not a member of the Board is also accepted. Accordingly, no offence is proved against the Respondent in relation to the Second Trading Session.
17. In light of the above, in exercise of the powers under Section 15E (1) of the Ordinance, I hereby impose a fine of Rs. 200,000/- (Rupees Two Hundred Thousand Only) on the Respondent for contravention of sub-section (1) of Section 15A of the Ordinance with regard to the First Trading Session.
18. In addition, in exercise of the powers under Section 15E (2) (a) (ii) of the Ordinance, the Respondent is directed to pay a sum of Rs. 832,140/- (Rupees Eight Hundred Thirty-Two



Thousand, One Hundred and Forty Only) to the Funds of TREET as the amount of loss suffered by them.

19. The matter is disposed of in the above manner and the Respondent is directed to deposit the fine as mentioned in paragraph 17 above, 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. Moreover, the Respondent is directed to deposit the sum of money to the Funds of TREET as mentioned in paragraph 18 above and furnish the copy of the deposit receipt to the undersigned.
20. 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 June 16, 2011
Islamabad.