

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

In the matter of Show Cause Notice dated April 20, 2011, issued to
M/S. H.S.Z. Securities (Pvt.) Ltd. Ex-Member of the Lahore Stock Exchange (G)
Limited

Date of Hearing :	October 20, 2011
<u>Present at the Hearing:</u>	
<u>Representative of H.S.Z. Securities (Pvt.) Ltd.</u>	No one appeared on behalf of H.S.Z. Securities (Pvt.) Ltd.
<u>Assisting the Director (BR&ICW):</u>	Asima Wajid, Deputy Director

ORDER

This Order shall dispose of the proceedings initiated through Show Cause Notice dated April 20, 2011 issued to H.S.Z. Securities (Pvt.) Ltd. ("the Respondent"), Ex-member of the Lahore Stock Exchange (G) Ltd. ("the LSE") under Section 22 of the Securities and Exchange Ordinance 1969 ("the Ordinance").

2. Brief facts of the case are that the Respondent was a member of the LSE and registered with the Securities & Exchange Commission of Pakistan ("the Commission") as a broker under the Brokers and Agents Registration Rules, 2001 ("the Rules"). Mr. Hameed Ghani and Dr. Naghmana Hameed were directors on the Board of the Respondent (hereinafter referred to as "Directors"). On September 7, 2010 a notice was published in a newspaper that the Respondent has filed a winding-up petition (Civil Original No. 37 of 2010) in the Honourable Lahore High Court. The Respondent closed its offices registered with the LSE without any prior intimation in violation of regulation 10 of the Regulation Governing LSE Members' Office(s)/Branch Office(s) for conducting the business and trading of shares and securities within/outside the Exchange (the "Regulations"). The LSE therefore, vide notice No. 5261 dated September 9, 2010 suspended and subsequently expelled the Respondent from membership of the exchange on April 19, 2011. Central Depository Company of Pakistan Limited (CDC) also suspended admission of the Respondent to the Central Depository System (CDS) vide notice dated September 9, 2010.

3. The LSE through letter dated September 17, 2010 informed the Commission regarding receipt of investor claims against the Respondent. The Commission therefore, in exercise of the powers delegated through SRO No. 1061(1)/2005 dated October 18, 2005 to

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the Executive Director (SMD), ordered an enquiry under section 21 of the Securities and Exchange Ordinance, 1969 (the 'Ordinance') vide Order No. 4(BRL-106)/SE/SMD/2003 dated October 8, 2010. The following officers of the Commission (collectively referred to as the Enquiry Committee) were appointed to enquire into the matter relating to outstanding investor claims against the Respondent, inspect the books and record and to investigate the trading activity and practices of the Respondent and do all such things as were necessary or incidental thereto:

- 1) Mr. Muhammad Tanveer Alam
- 2) Mr. Shaukat Hameed
- 3) Mr. Ghulam Mustafa
- 4) Ms. Saima Shafi Rana

4. Through the aforesaid enquiry order, the Respondent was directed to fully cooperate and assist the Enquiry Committee in conducting and completing the Enquiry. The Respondent was also directed to provide any information and documents as required by the Enquiry Committee from time to time. The Respondent was warned that in case of its failure to provide the required information, appropriate action would be initiated against it under the law.

5. The Enquiry Committee, vide its letter dated October 14, 2010 advised the Respondent to provide the following information pertaining to its operations on or before October 28, 2010:

1. Complete General Ledgers and subsidiary ledgers (party-wise ledgers) for the period from July 01, 2009 to September 9, 2010.
2. Bank statements of all the banks for the period from July 01, 2009 to September 9, 2010.
3. Party-wise receipts and payment details for the period from July 01, 2009 to September 9, 2010.
4. Client-wise transaction details for the period from July 01, 2009 to September 09, 2010.
5. Risk Management Policy including margin requirements.
6. Audited Accounts of the Brokerage House for the last two years.
7. Net Capital Balance Certificate for the last two years.
8. List of authorized signatories for Banks/CDC/NCCPL/LSE including copies of Board Resolutions and signatories cards.
9. Copies of minutes of meetings of shareholders and directors of the company.
10. List of employees and the directors including designation, current address and job description (in case of employees only).
11. Trial Balance as on September 9, 2010.
12. Clients' Securities Balance report and equity/exposure report of clients as on September 9, 2010.
13. Correspondence with complainants as well as with LSE relating to complaints.
14. Documentary evidence regarding actions taken by the management of the Brokerage House for resolution of complaints.
15. Account Opening forms of clients, with the house as well as with the CDC.
16. Pledge Reports of House/ Sub-accounts and Details of pledge (ADD/RELEASE/CALL) by LSE / Banks.



17. Agreement/ Correspondence with Bank/LSE relating to financing facility obtained, if any.
18. CDC audit/inspection report issued by CDC.
19. List of Bank Accounts Maintained by the Brokerage House with their address, and details of available assets of the Brokerage House.
20. Details of pending/ unsettled claims as of October 14, 2010.
21. Details of loan/ finance facilities obtained from the banks and details of financial dues outstanding against the company.
22. Clients Delivery Statement for the period from July 01, 2009 to September 9, 2010.
23. Pattern of share holding.
24. Copies of existing charge registered on any assets of the company.
25. UIN wise and scrip wise break up relating to balance of final loss payable to NCCPL as on September 9, 2010 and its subsequent position.

6. The Respondent failed to provide the required information within stipulated time period. Therefore, the Enquiry Committee through reminder letters dated October 29, 2010 and December 10, 2010 advised the Respondent to provide the requisite information. However, the Directors through their letters dated nil (received by the Enquiry Committee on November 15, 2010 and December 28, 2010) refused to provide the required information and record on the pretext of pending winding up petition before the Lahore High Court and also questioned the validity of the Enquiry.

7. The Enquiry Committee through its preliminary report dated February 25, 2011 informed the Commission that despite persistent efforts by the Enquiry Committee through various letters and repeated reminders, the Directors of the Respondent have failed to provide the required information as directed by the Enquiry Committee in violation of the Ordinance. Therefore, the Commission issued a Show Cause Notice (SCN) under adjudication dated April 20, 2011 to the Respondent and its Directors under section 22 of the Ordinance. Hearing in the matter was held on April 29, 2011 where the Directors of the Respondent personally appeared and committed to provide the information as required by the Enquiry Committee. In view thereof, the matter was adjourned *sine die* to afford an opportunity to the Respondent to cooperate with the Enquiry Committee and provide the requisite information.

8. The perusal of the record transpires that certain information/record was provided by the Respondent on May 16, 2011, however, complete information was not provided. Some documents were mentioned in the cover letter but were not enclosed as annexure. The details of the documents which were not provided were communicated to the Respondent vide letter dated May 24, 2011 by the Enquiry Committee.

9. The Respondent through letter dated June 20, 2011, stated that the remaining record is in custody of the LSE which has refused access to the same. Accordingly, the Enquiry Committee took up the matter with the LSE for provision of the record. The LSE through letter dated July 19, 2011 directed the Directors of the Respondent to ensure presence at its premises on July 25, 2011 for the purpose of handing over the requisite record to the Enquiry Committee. However, no one appeared on the said date on behalf of the Respondent and the LSE intimated that the Directors of the Respondent have refused to provide the back office record to the Enquiry Committee.



10. Thereafter, the Enquiry Committee through notice dated September 21, 2011 under section 21(3) of the SEO 1969 again directed the Respondent to ensure presence of the authorized representative of the Respondent at the LSE premises on October 3, 2011 at 10:30 A.M. to assist the Enquiry Committee in provision of the record. However, instead of complying with the direction of the Enquiry Committee, Mr. Hameed Ghani, Director of the Respondent refused to provide the record on the pretext that scope of enquiry is undefined and there is a status quo order granted by the Hon' able Lahore High Court. However, no copy of the injunctive order as claimed was provided to the Enquiry Committee. The said matter was reported by the Enquiry Committee on October 11, 2011 to the Commission.

11. In view of the failure to discharge its obligation and to fulfill the commitment of ensuring compliance with the Ordinance by cooperating with the Enquiry Committee, in order to conclude the proceedings of the SCN and in the interest of justice, the undersigned through hearing notice dated October 13, 2011 afforded a final opportunity to the Respondent and its Directors to appear before the undersigned on October 20, 2011. It was explicitly mentioned in the said hearing notice that failure to appear on the said hearing will result in decision on the basis of available record. The Respondent failed to appear on the said date of hearing but provided a written response dated October 20, 2011. The brief of the arguments and justifications provided by the Respondent in the said response are as under:

- i. *The purpose of the subject inquiry is to frustrate the causes of winding up petition filed by the Respondent;*
- ii. *All the available record was furnished to the Enquiry Committee vide consignment dated May 12, 2011, since the Respondent's office is closed, the record is not accessible to the Respondent;*
- iii. *No person can be compelled to depose against his own self and harassed through a law, defeating the fundamental rights as envisaged in the constitution of the Islamic Republic of Pakistan;*
- iv. *The Enquiry Committee's visit to inspect and seize the books of accounts and documents is against the law, excessive and an attempt to frustrate the fundamental rights as envisaged under the Constitution of Islamic Republic of Pakistan;*
- v. *Relevant record itself does not define what record is sought and any direction for such production of record should be in line with section 24-A of the General Clauses Act and must not defeat the fundamental rights as envisaged under the Constitution of Islamic Republic of Pakistan; and*
- vi. *Direction for production of relevant record, without specifying the scope of subject enquiry is bad in law and suffers from compliance with section 24-A of the General Clauses Act.*

12. Since despite sufficient notice, the Respondent, its Directors or their authorized representatives failed to appear on the date of hearing i.e. October 20, 2011, this order is passed on the basis of available record. My findings on the arguments and assertions made by the Respondent to the issues raised in the SCN are as follows:

- i. The arguments and the contentions raised by the Respondent are not related to the matter in issue of the SCN and do not merit any discussion. However, in the interest of justice, these issues are briefly discussed in this order. The contentions that the purpose of the Enquiry is to frustrate the causes of the winding up petition filed by the Respondent and that the scope of the Enquiry has not been specified are untenable.



The order of appointment of Enquiry Committee and initiation of Enquiry dated October 8, 2010 clearly specifies the scope of the Enquiry i.e. to enquire into the matter relating to outstanding investor claims against the Respondent. The Order of initiation of Enquiry was issued under section 21 of the Ordinance, which empowers the Commission or any person to whom the power of the Commission is delegated to enquire into any dealing or transaction in securities by any broker of the Exchange or any person. The Respondent and its Directors are duty bound under section 21 (2) of the Ordinance to furnish such information and documents within their custody or power or within their knowledge relating to or having bearing on the subject matter or the enquiry, as the person conducting the enquiry may require. Any refusal to provide the information required by the Enquiry Committee on any pretext is a contravention of the Ordinance. The scope of the Enquiry is clearly coming out of the order dated October 8, 2010, the Respondent was clearly instructed by the competent authority to cooperate with the Enquiry Committee and the order was served on the Directors of the Respondent. I am of a considered view that the said order fulfills the requirement of section 24-A of the General Clauses Act.

- ii. The contention that the record of the Respondent was inaccessible since it was present in its office at the LSE premises is also not tenable. Adequate arrangements were made by the LSE and the Enquiry Officers to enable the Respondent to provide the required information. The LSE through letter dated July 19, 2011 directed the Directors of the Respondent to ensure presence at its premises on July 25, 2011 for the purpose of handing over the requisite record to the Enquiry Committee. However, the Respondent failed to provide the record. The Enquiry Committee through Notice dated September 21, 2011 again directed the Respondent to ensure presence at the room allotted to the Respondent at the LSE premises on October 3, 2011 at 10:30 A.M. to enable the Enquiry Committee to inspect and seize the books of accounts and documents required by Enquiry Committee to conclude the Enquiry. However, instead of complying with the direction of the Enquiry Committee, Mr. Hameed Ghani, Director of the Respondent appeared on the said date and time and refused to provide the record. The onsite memorandum placed on record by the Enquiry Committee, which was made in presence of Mr. Mujahid Nadeem, DGM Operations LSE, Mr. Mehr Muhammad Iqbal, Deputy Manager Legal LSE and Mr. Muhammad Yousaf, Chief Security Officer LSE Building, further narrates that the office premises of the Respondent was under the lock of the Respondent. It was further informed by Mr. Muhammad Yousaf, Chief Security Officer of the LSE and Mr. Muhammad Naeem an employee of KSR Securities (Private) Limited (brokerage house adjacent to room 609 of the Respondent) that the Directors of the Respondent shifted some record of the Respondent to M/s. Financial Harbour (Private) Limited, another member of the LSE, whose nominee director is Ms. Sana Hameed daughter of the Directors of the Respondent. Further, Mr. Hameed Ghani, Director of the Respondent who was present on the said date refused to provide the record to the Enquiry Committee. Therefore, I find no merit in this contention of the Respondent and it is established that the Respondent willfully failed to provide the information and requisite record.
- iii. The averment of the Respondent that the exercise of the power by the Enquiry Committee to solicit information, record and to inspect and seize the books of account and other record is against law is fallacious. The powers of the Enquiry Committee



under section 21 have been discussed above and are reiterated for the sake of brevity. Further section 21 (4) of the Ordinance further provides that the person holding enquiry under section 21 of the Ordinance, shall for the purpose of such enquiry have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit in respect of enforcing attendance of a person, examining him on oath or affirmation, compelling the production of documents and issuing commission for examination of witnesses. Further, any proceeding before the enquiry officers shall be deemed to be “judicial proceedings” within the meaning of section 193 and 228 of the Pakistan Penal Code. I have reviewed the notices and correspondences of the Enquiry Committee and the exercise of the powers is within the limits prescribed by the law. The Respondent has been evading his statutory responsibility to cooperate with the Enquiry Committee on one pretext or the other despite being afforded numerous opportunities, which is a contravention of the Ordinance.

- iv. The argument that no person can be compelled to depose against his own self and harassed through a law, defeating the fundamental rights as envisaged in the constitution of the Islamic Republic of Pakistan is also not tenable. The Respondent has made a deliberate attempt to concoct an argument in order to evade his responsibility and duty under the Ordinance to furnish information as required by the Enquiry Committee. The Respondent has not cited any law or any specific provision of law which would be infringed by the provision of information to the Enquiry Committee.
- v. Further, the contentions that the direction for production of record is not in line with section 24-A of the General Clauses Act and that it defeats the fundamental rights as envisaged under the Constitution of Islamic Republic of Pakistan are unsubstantiated and incorrect. The Enquiry Committee has time and again explicitly stated in its notices, directions and letters, the nature of the required information along with all the particular details. This fact can be corroborated from the perusal of the relevant record. Therefore, this averment also has no merits.

13. The upshot of the discussion is that the Respondent has failed to provide the required information as directed in detail by the Enquiry Committee. The Respondent and its Directors have been delaying the matter on one pretext or the other. The arguments and contentions raised by the Respondent have no merits. Numerous opportunities have been afforded to the Respondent to furnish the required information and to comply with the directions of the Enquiry Committee but the Respondent and its Directors have failed to comply with the directions of the Enquiry Committee to furnish the information and record required under the Ordinance.

14. Further, following issues of grave concerns have also been placed on record by the Enquiry Committee which further substantiate the motives of the Directors of the Respondent for failing to comply with the provisions of the Ordinance, are made part of this order:

- a. National Accountability Bureau, Punjab has also taken cognizance of the alleged irregularities in the affairs of the Respondent.

- b. The Respondent defaulted on payments to its clients as the LSE has received a large number of investors' claims against the Respondent right after closure of its operations and branch office. At present the LSE has received 125 investors' claims against the Respondent amounting to Rs.50.6 Million.
- c. As per CDC Statements of the Respondent, more than 400 sub-accounts have been maintained under the participant ID of the Respondent and most of them held no shares/holdings. The maximum number of shares was held either in the house account of the Respondent or in few sub-accounts.
- d. The CDC's internal Audit Department had carried out the inspection of records of participant ID of the Respondent in February 2010 and reported certain instances in which clients securities were handled from the house account of the Respondent. Moreover, the CDC vide its letter dated August 9, 2010 had also imposed penalty on the Respondent.

15. In view of the foregoing and the deliberate and willful failure of the Respondent and its Directors to provide the information/record as required by the Enquiry Committee, violation of Section 21 of the Ordinance stands established. I am of the considered view that the Respondent and its Directors have failed to comply with the requirements of the Ordinance and the Rules & Regulations made there under and have failed to furnish the record required under the Ordinance. Therefore, in exercise of the powers conferred by section 22 of the Ordinance, I hereby impose penalty of Rs. 2 Million on the Respondent and of Rs. 1 million on each Director of the Respondent.

16. This matter is disposed of in the above manner and the Respondent and its Directors are directed to deposit the fine as mentioned in paragraph 15 above in the account of the Commission being maintained in the designated branches of the MCB Bank Limited not later than thirty (30) days from the date of this Order and furnish the copy of the deposit challan to the undersigned.

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


Hasnat Ahmad
Director (BR&ICW)

Dated March 5, 2012

