

**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 February 14, 2012, issued to
M/s. Wasi Securities (SMC-Pvt.) Ltd., Ex-Member of the Lahore Stock Exchange (G)
Limited

Date of Hearing :	February 21, 2012
<u>Present at the Hearing:</u> <u>Authorized Representative of the Respondent</u>	No one appeared on the date of hearing and no request for adjournment was received before the date of hearing despite service of notice.

ORDER

1. This Order shall dispose of the proceedings initiated through Show Cause Notice No. 4 (BRL-53) SE/SMD/2001 dated February 14, 2012 (hereinafter referred to as the "SCN") issued to Wasi Securities (SMC- Pvt.) Ltd. ("the Respondent"), Ex- Member of the Lahore Stock Exchange (G) Limited ("the LSE") under Section 22 of the Securities and Exchange Ordinance, 1969 ("the Ordinance").

2. Brief facts of the case are as under:-

- a) 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") and its board is constituted of one director i.e. Mr. Wasi Ullah Khan (hereinafter referred to as the "Director").
- b) The Commission received numerous complaints against the Respondent regarding unlawful withdrawal of shares from the sub- accounts of its clients and disposing of the shares without permission of the account holders. Further, as per available record, the Respondent failed to honor the award of the Panel of Arbitrators of LSE, announced on September 1, 2009 and upheld by the Appellate Bench of LSE vide award dated May 11, 2011. In view of the Respondent's failure to deposit award money with LSE as required under regulation 36(c) of the General Regulations, the LSE issued an expulsion notice to the Respondent on May 18, 2011.

- c) On June 1, 2011, the LSE informed the Commission that instead of payment of award money to the complainant, the Respondent filed a winding up petition (Civil Original No. 29/2011) before the Lahore High Court under Sections 305 and 309 of the Companies Ordinance, 1984. In consequence, LSE switched off terminals of the Respondent on June 1, 2011 on account of violation of Regulations 2(A)(1)(d) and 2(A)(1)(i) of the General Regulations. Subsequently, the Governing Board of Directors of the LSE, expelled membership of the Respondent with effect from June 3, 2011. The Central Depository Company (hereinafter referred to as "CDC") vide notification dated June 04, 2011 also terminated admission of the Respondent to the Central Depository System.
- d) In view of the above, the Commission conducted initial scrutiny of the documents, record and the contents of the winding up petition filed by the Respondent, which revealed the following issues and discrepancies:-
- (i) As per statement made by the Respondent in the winding up petition an amount of Rs.53.341 million was payable to 105 investors of the Respondent, whereas as per CDC record, shares worth estimated Rs. 300,000/- were actually available in investors' sub-accounts; i.e. shares worth approximately Rs.53.041 million were apparently unaccounted for.
 - (ii) The Respondent in the winding up petition stated that there were 105 investors/clients, whereas as per information gathered from CDC, there were 83 sub-accounts holders.
 - (iii) The main reason for filing of winding up petition as stated by the Respondent was default by large number of clients and payment of high markup on banks and private loans. As per financial statements for the year 2008 to 2010, the Respondent's receivables went down from Rs. 81.688 million to Rs. 40.602 million. As of June 30, 2010 net positive equity of the Respondent was Rs. 86.990 million.

3. In view of the prima facie, violations, misstatements, non-compliances and pending investor claims on the part of the Respondent, the Competent Authority, in exercise of the power delegated through SRO No. 1076(1)/2000 dated November 29, 2010, ordered an Enquiry under section 21 of the Ordinance read with Section 29 of the Securities and Exchange Act, 1997 (hereinafter referred to as the 'SECP Act') through an order dated June 8, 2011. The following officers of the Commission (collectively referred to as the Enquiry Officers) 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:

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| 1. | Mr. Tahir Mahmood Kiani | Deputy Director (SD) |
| 2. | Ms. Asima Wajid | Deputy Director (SD) |


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4. Through the aforesaid Enquiry order, the Respondent was directed to fully cooperate and assist the Enquiry Officers in conducting and completing the Enquiry. The Respondent was also directed to provide any information and documents as required by the Enquiry Officers 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. On January 17, 2012, the Enquiry Officers submitted their interim report to the Competent Authority and highlighted that the Respondent has failed to provide the relevant record and information as directed by the Enquiry Officers despite repeated directions. The brief findings of the Enquiry Officers were as follows:

- a) The Enquiry Officers, vide letter dated June 22, 2011 advised the Respondent to provide the following information pertaining to its operations on or before July 06, 2011:
- (i) Account Opening forms of Clients, with the house as well as with the CDC.
 - (ii) Complete General Ledgers and subsidiary ledgers (party-wise ledgers) for the period from July 01, 2009 to June 4, 2011.
 - (iii) Client-wise transaction details for the period from July 01, 2009 to June 4, 2011.
 - (iv) Party-wise receipts and payment details for the period from July 01, 2009 to June 4, 2011.
 - (v) Trial Balance as on June 4, 2011.
 - (vi) Details of pending/unsettled claims as on June 4, 2011
 - (vii) Clients' Securities Balance Report and equity/exposure report of clients as on June 4, 2011.
 - (viii) Clients Delivery Statement for the period from July 01, 2009 to June 4, 2011.
 - (ix) UIN wise and scrip wise break up relating to balance of final loss payable to NCCPL as on June 4, 2011 and its subsequent position.
 - (x) List of employees and the directors including designation, current address and job description (in case of employees only).
 - (xi) Copies of minutes of meetings of shareholders and directors of the company
 - (xii) Risk Management Policy including margin requirements.
 - (xiii) List of Bank Accounts Maintained by the Brokerage House with their address, and details of available assets of the Brokerage House.
 - (xiv) Bank statements of all the banks for the period from July 01, 2009 to June 4, 2011.
 - (xv) Details of loan/finance facilities obtained from the banks and details of financial dues outstanding against the company
 - (xvi) Agreement/Correspondence with Banks/LSE relating to financing facility obtained, if any
 - (xvii) List of authorized signatories for Banks/CDC/NCCPL/LSE including copies of Board Resolutions and signatories cards.
 - (xviii) Net Capital Balance Certificate for the last two years.
 - (xix) Audited Accounts of the Brokerage House for the last two years.
 - (xx) Correspondence with complainants as well as with LSE relating to complaints
 - (xxi) Documentary evidence regarding actions taken by the management of the Brokerage House for resolution of complaints.

- (xxii) Copies of existing charge registered on any assets of the company
 - (xxiii) Pattern of share holding
 - (xxiv) Pledge Reports of House/Sub-accounts and Details of pledge (ADD/RELEASE/CALL) by LSE/Banks.
 - (xxv) CDC audit/inspection report issued by CDC
- b) The LSE vide letter dated July 19, 2011 advised the Respondent to be present at the LSE Building on July 26, 2011 at 11.00 a.m. to provide the Back Office record as per requirement of the Enquiry Officers. The Respondent failed to provide the required information within the stipulated time period either to the Commission or the LSE. Therefore, the Enquiry Officers vide letter dated August 11, 2011 again advised the Respondent to provide the requisite information.
- c) The Director vide his letter dated August 20, 2011 stated that the LSE has banned his entry in the LSE Building, his room and iron safe are sealed and all his record is in the control of the LSE. The Enquiry Officers took up this matter with the LSE. In response the LSE confirmed that notice to ban the entry of the staff/representatives of the Respondent was given on June 3, 2011. The LSE vide letter dated July 19, 2011 advised the Respondent to visit the LSE Building to provide the record to the Enquiry Officers.
- d) The Enquiry Officers vide letter dated September 22, 2011, conveyed to the Respondent that they would visit the Respondent's registered office (Room # 208-210, 2nd Floor, LSE Building, 19-Khyaban-e-Aiwan-e-Iqbal) on October, 5, 2011 to inspect and if necessary to seize the record of the Respondent in exercise of the powers conferred under section 21(3) of the Ordinance. The Enquiry Officers directed the Respondent to be present at the stated date and time to assist them in provision of the record.
- e) The Respondent failed to appear at the LSE Building on the said date and time. The Respondent, vide his letters dated September 19 & 28, 2011, October 14, 2011 and December 27, 2011 refused to provide the required information and record on the pretext of pending winding up petition before the Lahore High Court. The Respondent claimed that he cannot be compelled to produce any document or any statement which can facilitate such process against his own-self. The Respondent questioned the role of the Commission as inquirer and adjudicator at the same time.
- f) The Enquiry Officers vide letters dated October 12, 2011, November 11, 2011 and December 19, 2011 addressed the concerns of the Respondent that the Commission can cause Enquiry into the affairs of the Respondent under section 21 of the Ordinance and the Enquiry Officers have exercised the powers granted to them by the Commission as provided for in the Ordinance. The Enquiry Officers reiterated that both section 21 of the Ordinance and section 29 of the SECP Act specifically empower the Commission to call for information in respect of the matter for which an Enquiry has been initiated. The Enquiry Officers further clarified that Enquiry against the Respondent is independent of the winding up proceedings and the Respondent shall be treated as a going concern for all purposes till its final dissolution in terms of section 402 of the Companies Ordinance, 1984 and mere initiation of winding up proceedings do not in any way bar or oust the

jurisdiction of the Commission to carry out its statutory duties and functions. However, the Respondent failed to provide any information.

5. On the basis of the interim report of the Enquiry Officers, the undersigned took cognizance of the Respondent's non-compliance of the directions and non-provision of information to the Enquiry Officers and issued a SCN to the Respondent and its Chief Executive/Director, Mr. Wasi Ullah Khan. The contents of the SCN are reproduced as under:

Sub: SHOW CAUSE NOTICE UNDER SECTION 22 OF THE SECURITIES AND EXCHANGE ORDINANCE, 1969

1. *WHEREAS, in exercise of its powers under Section 21 of the Securities and Exchange Ordinance, 1969 ("the Ordinance") read with Section 29 of the Securities and Exchange Commission of Pakistan Act, 1997 ("the Act"), the Securities and Exchange Commission of Pakistan ("the Commission") vide Order No. BRL-53/1/2009 dated June 8, 2011 appointed following two Enquiry Officers to enquire into the matter relating to outstanding investor claims against M/s. Wasi Securities (SMC-Pvt.) Limited ("the company"), Ex Corporate Member of the Lahore Stock Exchange (G) Limited:*

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| 1. | <i>Mr. Tahir Mahmood Kayani</i> | <i>Deputy Director (SD)</i> |
| 2. | <i>Ms. Asima Wajid</i> | <i>Deputy Director (SD)</i> |

(Hereinafter referred to as "Enquiry Officers")

2. *WHEREAS, the Enquiry Officers vide letters dated June 22, 2011 and August 11, 2011 advised the company to provide information and necessary record pertaining to the matter under enquiry and investigation including the account opening forms of the clients, general ledgers, trail balance, details of pending and unsettled claims etc. The Lahore Stock Exchange ("LSE") vide letter dated July 19, 2011 also requested the company to provide its back office record as required by the Enquiry Officers latest by July 26, 2011. However, despite the written requests, the company failed to provide any record within the stipulated time. The company through its Chief Executive Officer responded vide letter dated August 20, 2011, stating that all the record and the iron safe are sealed by the LSE in the office premises situated in the LSE building and that the same can be obtained directly from LSE.*

3. *WHEREAS, in furtherance of the response received from the Chief Executive Officer of the company, the Enquiry Officers in exercise of the powers conferred under Section 21(3) of the Ordinance, issued notice dated September 22, 2011 directing the company and Chief Executive Officer to ensure presence of an authorized representative of the company on October 5, 2011 at the company's office, Room No. 208-210, 2nd Floor, LSE building, 19 Khyaban-e-Aiwan-e-Iqbal, Lahore to enable the Enquiry Officers to inspect and seize the record of the company. Further, Managing Director LSE was directed to ensure presence of LSE representative and provide logistic supports, if any. However, no one appeared on behalf of the company as directed.*

4. *WHEREAS, the Chief Executive Officer of the company in response to the aforesaid notice dated September 22, 2011, replied through letter dated September 28, 2011 and refused to provide the record on the ground that a winding up petition of the company is pending before the Honorable Lahore High Court and that the company cannot be compelled to produce any record or statement that can be used against the company.*
5. *WHEREAS, the Enquiry Officers vide letter dated October 12, 2011 afforded another opportunity to the company to provide the record on or before October 21, 2011, however, instead of ensuring compliance and providing the requisite information and record to the Enquiry Officers, the Chief Executive Officer of the company through letter dated October 14, 2011 reiterated its stance and further argued that the methodology adopted by the Enquiry Officers is not approved by the Constitution of Islamic Republic of Pakistan. The Enquiry Officers vide letter dated November 11, 2011 advised the company by citing the relevant legal provisions and responding to the averments of the company to ensure compliance with its earlier directions and provide the relevant record and information on or before November 23, 2011. The company was also warned that further non-compliance in this regard would result in initiation of appropriate legal action against it. However, the company failed to provide any information and record and evaded the legal requirement on one pretext or the other.*
6. *WHEREAS, in terms of section 21 (2) & (3) of the Ordinance any person and every member of the exchange (past or present) is duty bound to furnish such information and documents having bearing on the subject matter of the enquiry as the person conducting the enquiry may require. Any failure or refusal to furnish any document, paper or information required to be furnished by or under the Ordinance is punishable with penalty under section 22 of the Ordinance.*
7. *AND WHEREAS as reported by the Enquiry Officers it appears that the company and its Chief Executive Officer have failed to provide the requisite information and record as directed by the Enquiry Officers in violation of section 21 of the Ordinance which is punishable under section 22 of the Ordinance.*
8. *NOW THEREFORE, you are hereby called upon to Show Cause in writing by February 20, 2012, as to why penalty should not be imposed on you under Section 22 of the Ordinance, on account of failure to provide information and record as directed by the Enquiry Officers during the course of enquiry as required by the Ordinance. You are further directed to appear in person or through an authorized representative (with documentary proof of such authorization) before the undersigned, on February 21, 2012 at 10:30 a.m. at the Commission's Head office at 9th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad. You are advised to bring all relevant record in original, which you may consider necessary for your defense/clarification.*
9. *In case of failure to appear on the said date of hearing the matter will be decided on the basis of available record.*

10. *This Show Cause Notice under section 22 of the Ordinance is issued in exercise of powers of the Commission delegated through SRO. 1076(I)/2010 dated 29th November, 2010.*

*Sd/-
(Hasnat Ahmad)
Director (MS &CID)*

6. The Chief Executive/Director of the Respondent or his authorized representative were afforded an opportunity to appear before the undersigned on February 21, 2012. However, no one appeared before the undersigned and no request for adjournment was received on behalf of the Respondent before the said date of hearing despite service of the SCN. The Chief Executive of the Respondent provided a written response dated February 20, 2012, which is reproduced as under:

Subject: SHOW CAUSE NOTICE UNDER SECTION 22 OF THE SECURITIES AND EXCHANGE ORDINANCE, 1969

The Show Cause Notice under reference is unwarranted. It is acknowledged even in this notice by you that the undersigned has sought protection of basic rights as envisaged under the Constitution of Islamic Republic of Pakistan. Your quarries in this respect have already been addressed sufficiently.

I have not been informed of any basis on which subject enquiry is underway, when the gist of allegation has not furnished to me your advise "to bring all relevant record in original, which you may consider necessary for your defense / clarification" is irrelevant.

I would appreciate if you try to understand the spirit of the Constitution and withdraw your show cause notice to compel the undersigned to produce any record for which assurance cannot be issued to the undersigned that the same will not be used against him.

It is categorically reiterated that the provisions of the Constitution remain superior for all times and if there are any provisions in law which conflicts with provisions of Constitution, the would be null and void.

I solicit withdrawal of show cause notice accordingly.

*SD/-
Wasi Ullah Khan
Chief Executive
Wasi Securities (SMC) Private Limited*

7. The arguments and the contentions raised by the Respondent are not relevant 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.

a) The argument that the Commission has not informed the basis of Enquiry and gist of allegations for which the record was necessary for defense/clarifications is not

justified. The order of appointment of Enquiry Officers and initiation of Enquiry dated June 8, 2011 explicitly describes 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 Director is duty bound under section 21 (2) of the Ordinance to furnish such information and documents within his custody or power or within his 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 Officers on any pretext is a contravention of the Ordinance. The scope of the Enquiry is clearly coming out of the order dated June 8, 2011, the Respondent was categorically instructed by the Competent Authority to cooperate with the Enquiry Officers and the order was served on the Director of the Respondent. The powers of the Enquiry Officers 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 Officers and the exercise of the powers is within the limits prescribed by the law. The Respondent has been evading its statutory responsibility to cooperate with the Enquiry Officers despite being afforded numerous opportunities on one pretext or the other, which is a contravention of the Ordinance.

- b) The argument that no person can be compelled to produce record and depose against his own self defeats 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 Officers. 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 Officers.

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

- a) 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 62 investors' claims against the Respondent.

- b) The CDC's internal Audit Department had carried out inspection of the records of participant ID of the Respondent in May 2011 and reported certain instances in which clients securities were transferred from various sub-accounts to the house account of the Respondent and subsequently pledged with Bank Alfalah Limited without permission of the sub-account holders.

9. In view of the above, it is established that the Respondent has failed to provide the required information as directed in detail by the Enquiry Officers. The Respondent and its Director has 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 Enquiry Officers but the Respondent and its Director has failed to comply with the directions of the Enquiry Officers and failed to furnish information and record, which it was required to furnish under the Ordinance

10. In view of foregoing and the deliberate, willful failure of the Respondent and its Director to provide the information/record as required by the Enquiry Officers, violation of Section 21 of the Ordinance stands established. I am of the considered view that the Respondent has failed to comply with requirements of the Ordinance and the Rules & Regulations made thereunder and failed to furnish the requisite record and information which it was required to furnish under the Ordinance. Therefore, in exercise of the powers conferred by section 22 of the Ordinance, I hereby impose penalty of Rupees Three Million (Rs. 3.0 Million) on the Respondent and of Rupees Two Million (Rs. 2.0 Million) on the Director of the Respondent.

11. This matter is disposed of in the above manner and the Respondent is directed to deposit the fine as mentioned in paragraph 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.

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


HASNAT AHMAD
Director (MSCID)

March 7, 2012

