



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

**Before The Director / HOD (Market Supervision & Capital Issue Department)**

**In the matter of Show Cause Notice no. 1(18)IT/MSW/SMD/1(5)2004/10**

**dated January 20, 2012 issued to**

**Mr. Mohammad Aamir under Section 15E of the Securities and Exchange Ordinance, 1969**

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***Date of Hearing:***

*March 30, 2012*

***Present at Hearing:***

*Representing Mohammad Aamir:*

(i) *Mr. Shahid Mehmood Tabassum* *Advocate, Shahid Kamboh Law Chambers*

*Assisting the Director / HOD (MSCID)*

(i) *Mr. Muhammad Atif Hameed* *Deputy Director, SECP*

(ii) *Mr. Mian Ahmad Ibrahim* *Deputy Director, SECP*

1. This order shall dispose of the proceedings initiated through Show Cause Notice no. 1(18)IT/MSW/SMD/1(5)2004/10 dated January 20, 2012 (“**SCN**”) issued by the Securities and Exchange Commission of Pakistan (“**the Commission**”) under Section 15E of the Securities and Exchange Ordinance, 1969 (“**Ordinance**”) to Mr. Mohammad Aamir (“**the Respondent**”).
2. The brief facts of the case are that while reviewing the trading data of B.R.R Guardian Modaraba (“**BRRGM**”) and First Dawood Investment Bank Limited (“**FDIBL**”) during the period from July 01, 2008 to January 31, 2011 (“**the Review Period**”), it was noted that trading by the Respondent in certain illiquid scrips through his different trading accounts was in correlation with the trading of BRRGM and FDIBL. It was noted that in majority of the instances the Respondent bought the scrip prior to the purchase by BRRGM and FDIBL and subsequently sold



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all or major portion of the same to BRRGM and FDIBL and the rest in the market at higher price, around the same time BRRGM and FDIBL started buying the shares (“**Correlated Trading**”), which resulted in considerable gain to the Respondent. The details of abovementioned instances of Correlated Trading is summarized in the following Table - 1:

**Table – 1**

Sr. No.	Scrip Code	Date	Broker	Bought Quantity (Shares)	Sold Quantity (Shares)	Matched volume with BRRGM or FDIBL		Profit (Rs.)	% of Matched Bought Qty to Bought Qty	% of Matched Sold Qty to Sold Qty
						Bought Qty	Sold Qty			
1	ABOT	20090617	Multiline Securities (Pvt.) Ltd.	14,800	14,800	-	14,800	35,066	-	100.00%
		20100325	Multiline Securities (Pvt.) Ltd.	28,000	28,000	-	28,000	84,695	-	100.00%
		20101026 - 20101027	Multiline Securities (Pvt.) Ltd.	29,400	29,400	15,000	29,400	152,623	51.02%	100.00%
2	BATA	20101111 - 20101112	Multiline Securities (Pvt.) Ltd.	6,500	6,500	-	6,500	165,624	-	100.00%
		3	BOC	20110104	Multiline Securities (Pvt.) Ltd.	27,162	27,162	-	27,162	126,437
4	COLG	20090325	Multiline Securities (Pvt.) Ltd.	9,400	9,400	-	9,400	282,376	-	100.00%
5	DAWH	20090407	Multiline Securities (Pvt.) Ltd.	27,100	27,100	-	19,100	52,373	-	70.48%
		20090413	Multiline Securities (Pvt.) Ltd.	26,000	26,000	-	25,700	67,869	-	98.85%
		20090422	Multiline Securities (Pvt.) Ltd.	31,400	31,400	-	31,400	189,705	-	100.00%
		20091002	Multiline Securities (Pvt.) Ltd.	16,000	16,000	-	15,993	49,035	-	99.96%
		20091006	Multiline Securities (Pvt.) Ltd.	25,000	25,000	-	25,000	97,925	-	100.00%
		20091014	Multiline Securities (Pvt.) Ltd.	21,469	21,469	-	20,002	60,179	-	93.17%
		20091214	Multiline Securities (Pvt.) Ltd.	4,700	4,700	-	4,699	18,640	-	99.98%
		20100108	Multiline Securities (Pvt.) Ltd.	50,000	50,000	-	43,540	128,818	-	87.08%
		20100318	Multiline Securities (Pvt.) Ltd.	22,000	22,000	-	22,000	59,660	-	100.00%
		20100622 - 20100624	Multiline Securities (Pvt.) Ltd.	9,550	9,550	-	9,018	67,186	-	94.43%
6	DLL	20100914 - 20100915	Multiline Securities (Pvt.) Ltd.	36,000	36,000	254	36,000	211,770	0.71%	100.00%
		20100319	Multiline Securities (Pvt.) Ltd.	16,000	16,000	-	15,684	27,242	-	98.03%
7	EFUL	20091023	Multiline Securities (Pvt.) Ltd.	12,500	12,500	-	12,500	59,713	-	100.00%
		20091030	Multiline Securities (Pvt.) Ltd.	16,375	16,375	-	16,375	79,545	-	100.00%



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Sr. No.	Scrip Code	Date	Broker	Bought Quantity (Shares)	Sold Quantity (Shares)	Matched volume with BRRGM or FDIBL		Profit (Rs.)	% of Matched Bought Qty to Bought Qty	% of Matched Sold Qty to Sold Qty
						Bought Qty	Sold Qty			
8	EXIDE	20100506	Multiline Securities (Pvt.) Ltd.	6,296	6,296	-	6,296	44,963	-	100.00%
		20100513								
		20110110	Multiline Securities (Pvt.) Ltd.	15,000	15,000	-	15,000	160,035	-	100.00%
9	GLL	20101019	Multiline Securities (Pvt.) Ltd.	75,414	75,414	-	50,414	16,329	-	66.85%
		20101022								
10	INDU	20090915	Multiline Securities (Pvt.) Ltd.	25,527	25,527	-	25,527	97,917	-	100.00%
		20110119								
11	KABP	20100730	Multiline Securities (Pvt.) Ltd.	41,689	41,688	-	41,687	111,915	-	100.00%
		20100823								
12	MARI	20080709	First National Equities Ltd.	28,000	28,000	-	28,000	296,100	-	100.00%
		20080714	First National Equities Ltd.	5,000	5,000	-	5,000	30,150	-	100.00%
		20080729	H. M. Idrees H. Adam / First National Equities Ltd.	8,400	11,300	-	8,400	10,542	-	74.34%
		20080804								
		20080808	First National Equities Ltd.	13,000	13,000	-	13,000	63,930	-	100.00%
		20090519	Multiline Securities (Pvt.) Ltd.	17,400	19,000	-	19,000	57,917	-	100.00%
		20090520								
		20090521	Multiline Securities (Pvt.) Ltd.	27,000	27,000	-	27,000	51,788	-	100.00%
		20090701	Multiline Securities (Pvt.) Ltd.	15,000	15,000	-	13,800	30,807	-	92.00%
		20090723	Multiline Securities (Pvt.) Ltd.	20,000	20,000	-	17,041	31,146	-	85.21%
20090805	Multiline Securities (Pvt.) Ltd.	10,000	10,000	-	10,000	133	-	100.00%		
20090914	Multiline Securities (Pvt.) Ltd.	22,000	16,000	-	15,960	71,323	-	99.75%		
20090918	Multiline Securities (Pvt.) Ltd.	10,000	10,000	-	10,000	10,843	-	100.00%		
13	MTL	20090318	Multiline Securities (Pvt.) Ltd.	6,500	6,500	-	6,500	41,293	-	100.00%
		20090319	Multiline Securities (Pvt.) Ltd.	13,000	13,000	-	13,000	24,418	-	100.00%
		20090513	Multiline Securities (Pvt.) Ltd.	15,000	15,000	-	14,900	61,075	-	99.33%
		20090522	Multiline Securities (Pvt.) Ltd.	12,000	12,000	-	11,900	34,533	-	99.17%
		20090525	Multiline Securities (Pvt.) Ltd.	11,500	11,500	-	11,500	80,700	-	100.00%
		20090604	Multiline Securities (Pvt.) Ltd.	26,000	26,000	-	25,700	132,687	-	98.85%
		20090626	Multiline Securities (Pvt.) Ltd.	9,900	9,900	-	9,400	64,055	-	94.95%
		20090804	Multiline Securities (Pvt.) Ltd.	15,500	15,500	5,000	15,500	172,901	32.26%	100.00%
		20090805								
		20090826	Multiline Securities (Pvt.) Ltd.	14,000	15,000	9,476	14,000	153,712	67.69%	93.33%
20090827										
20090909	Multiline Securities (Pvt.) Ltd.	19,000	19,000	5,000	18,957	150,335	26.32%	99.77%		
20090910										
20090930	Multiline Securities (Pvt.) Ltd.	19,567	19,567	-	19,567	156,485	-	100.00%		



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						Bought Qty	Sold Qty			
		20091001	Multiline Securities (Pvt.) Ltd.	12,126	12,126	-	12,126	70,425	-	100.00%
		20091007 - 20091008	Multiline Securities (Pvt.) Ltd.	13,001	13,001	-	12,578	212,226	-	96.75%
		20100416	Multiline Securities (Pvt.) Ltd.	26,060	25,960	-	18,710	135,105	-	72.07%
14	NRL	20090317	Multiline Securities (Pvt.) Ltd.	18,000	18,000	-	18,000	51,928	-	100.00%
		20090401	Multiline Securities (Pvt.) Ltd.	20,000	20,000	-	20,000	41,248	-	100.00%
		20090408	Multiline Securities (Pvt.) Ltd.	25,000	25,000	-	25,000	75,780	-	100.00%
		20090526	Multiline Securities (Pvt.) Ltd.	16,100	16,100	-	16,100	41,565	-	100.00%
		20090622	Multiline Securities (Pvt.) Ltd.	22,700	22,800	100	22,800	99,457	-	100.00%
		20090717	Multiline Securities (Pvt.) Ltd.	20,000	20,000	-	20,000	78,513	-	100.00%
		20090826	Multiline Securities (Pvt.) Ltd.	27,511	26,511	-	26,511	80,958	-	100.00%
		20090917	Multiline Securities (Pvt.) Ltd.	25,000	25,000	-	25,000	21,355	-	100.00%
		20100309	Multiline Securities (Pvt.) Ltd.	20,000	20,000	-	19,970	16,214	-	99.85%
15	PKGS	20080821	First National Equities Ltd.	10,000	10,000	-	10,000	30,060	-	100.00%
		20090313	Multiline Securities (Pvt.) Ltd.	11,800	11,800	-	9,000	34,669	-	76.27%
		20090331	Multiline Securities (Pvt.) Ltd.	24,800	24,800	-	21,700	39,098	-	87.50%
		20090406	Multiline Securities (Pvt.) Ltd.	29,800	27,000	-	27,000	82,653	-	100.00%
		20090413	Multiline Securities (Pvt.) Ltd.	9,900	9,900	-	9,900	18,471	-	100.00%
		20090514	Multiline Securities (Pvt.) Ltd.	36,000	36,000	-	16,300	132,626	-	45.28%
		20090610	Multiline Securities (Pvt.) Ltd.	28,000	28,000	-	21,200	118,426	-	75.71%
		20090825	Multiline Securities (Pvt.) Ltd.	22,362	22,362	-	22,362	70,924	-	100.00%
		20090918	Multiline Securities (Pvt.) Ltd.	31,200	31,200	-	30,150	55,148	-	96.63%
		20091215	Multiline Securities (Pvt.) Ltd.	45,000	45,000	-	45,000	110,428	-	100.00%
16	SEARL	20080725	First National Equities Ltd.	19,500	19,500	-	19,500	54,150	-	100.00%
		20080730	First National Equities Ltd.	10,000	10,000	-	10,000	19,020	-	100.00%
		20100402	Multiline Securities (Pvt.) Ltd.	35,000	35,000	-	35,000	42,810	-	100.00%
17	SGLL	20100405 - 20100406	Multiline Securities (Pvt.) Ltd.	22,000	22,000	-	22,000	(24,656)	-	100.00%
18	SHEL	20080715	First National Equities Ltd.	2,500	2,500	-	2,500	28,200	-	100.00%
		20080722	First National Equities Ltd.	4,000	4,000	-	4,000	45,804	-	100.00%
		20090403	Multiline Securities (Pvt.) Ltd.	25,000	25,000	-	25,000	91,686	-	100.00%
		20090512	Multiline Securities (Pvt.) Ltd.	14,000	14,000	-	14,000	54,609	-	100.00%
		20090616	Multiline Securities (Pvt.) Ltd.	10,800	12,800	-	11,700	44,705	-	91.41%
		20090618	Multiline Securities (Pvt.) Ltd.	12,000	12,000	-	12,000	52,200	-	100.00%
		20090626	Multiline Securities (Pvt.) Ltd.	15,000	15,000	-	14,400	33,522	-	96.00%
		20090702	Multiline Securities (Pvt.) Ltd.	18,500	18,700	-	18,500	54,002	-	98.93%



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Sr. No.	Scrip Code	Date	Broker	Bought Quantity (Shares)	Sold Quantity (Shares)	Matched volume with BRRGM or FDIBL		Profit (Rs.)	% of Matched Bought Qty to Bought Qty	% of Matched Sold Qty to Sold Qty
						Bought Qty	Sold Qty			
19	SITC	20090312	Multiline Securities (Pvt.) Ltd.	7,500	7,500	-	7,500	64,510	-	100.00%
		20101021	Multiline Securities (Pvt.) Ltd.	18,000	18,000	-	17,999	128,162	-	99.99%
		20101130	Multiline Securities (Pvt.) Ltd.	39,682	39,682	25,000	39,682	317,959	63.00%	100.00%
20	THALL	20090409 - 20090410	Multiline Securities (Pvt.) Ltd.	10,000	10,000	-	-	19,500	-	0.00%
		20091007	Multiline Securities (Pvt.) Ltd.	35,000	35,000	-	35,000	31,552	-	100.00%
		20091223 - 20091223	Multiline Securities (Pvt.) Ltd.	25,000	20,000	-	20,000	(1,787)	-	100.00%
21	TRIPF	20090316	Multiline Securities (Pvt.) Ltd.	10,000	10,000	10,000	10,000	75,000	100.00%	100.00%
		20090414	Multiline Securities (Pvt.) Ltd.	32,000	32,000	-	32,000	74,926	-	100.00%
		20090415	Multiline Securities (Pvt.) Ltd.	20,000	20,000	-	20,000	95,731	-	100.00%
		20090424	Multiline Securities (Pvt.) Ltd.	23,000	24,500	-	24,500	112,866	-	100.00%
		20090427 - 20090428	Multiline Securities (Pvt.) Ltd.	5,000	25,000	-	25,000	18,460	-	100.00%
		20090512	Multiline Securities (Pvt.) Ltd.	11,000	11,000	10,000	-	48,270	90.91%	-
		20100415	Multiline Securities (Pvt.) Ltd.	40,000	40,000	-	40,000	119,431	-	100.00%
22	ZTL	20100721 - 20100730	Multiline Securities (Pvt.) Ltd.	124,005	124,005	100,000	100,000	74,110	80.64%	80.64%
		20101028	Multiline Securities (Pvt.) Ltd.	99,362	99,362	80,002	99,362	164,991	80.52%	100.00%
<b>TOTAL</b>				<b>2,123,258</b>	<b>2,137,657</b>	<b>259,832</b>	<b>1,998,372</b>	<b>7,736,423</b>	<b>12.24%</b>	<b>93.48%</b>

\* Profit calculated on the basis of average buy and sell rate

3. During the Review Period the Respondent traded through his accounts with the following brokers of KSE:

Sr. No.	Broker Name	Client Code
1	H. M. Idrees H. Adam	385 and 404
2	Multiline Securities (Pvt.) Ltd.	5801
3	First National Equities Ltd.	703

The trading pattern of the Respondent led to suspicion that the trading was executed on the basis of prior information regarding trading decisions by BRRGM and FDIBL.



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4. Meanwhile, the Enquiry Team of the Commission conducted Enquiry, under Section 21 of the Modaraba Companies and Modaraba (Floatation & Control) Ordinance, 1980, into the affairs of BRRGM, scrutinized different records and information including the telephonic records of B.R.R Investments (Pvt.) Limited ("BRRI"), which is management company of BRRGM and Multiline Securities (Pvt.) Limited. The Enquiry Team unearthed information that during the Review Period the Respondent was in contact with Mr. Muhammad Yousuf ("YT") who was Equity Investment Portfolio Manager at BRRGM and was also looking after investment portfolio of FDIBL during the Review Period. The aforesaid findings showed that the Respondent and YT knew each other and were in contact during the Review Period. Moreover, the examination of YT and the Respondent's bank account statements by the Enquiry Team also revealed that during the Review Period, the Respondent through his different bank accounts transferred an amount of Rs. 3.614 million through various cheques to YT's bank account. The details of said transactions are given in the following Table-2:

Table -2

Sr. No.	Date	Bank	Branch	Bank Account No.	Cheque No.	Amount Transferred to YT (Rs.)
1.	05/07/2008	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1243480	195,000
2.	12/05/2009				53029846	129,000
3.	21/05/2009				53029847	225,000
4.	12/06/2009				53029855	201,000
5.	12/06/2009				53029856	76,000
6.	24/06/2009				53029857	157,000
7.	09/07/2009				53029866	117,000
8.	05/08/2009				53029875	89,200
9.	08/08/2009	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1339388	150,000
10.	27/08/2009				1339396	109,800
11.	29/08/2009	MCB Bank Limited	Stock Exchange Branch, Karachi	3302-7	53029877	144,000
12.	12/09/2009	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1339398	93,000
13.	15/09/2009				1339399	42,000
14.	17/09/2009	MCB Bank Limited	Stock Exchange Branch, Karachi	3302-7	53029880	62,000
15.	03/10/2009				53029884	265,000
16.	28/10/2009	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1473898	205,000
17.	06/11/2009	Askari Bank Limited	Saima Trade Tower Branch, Karachi	020101062028	40026011	49,000
18.	23/12/2009	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1473913	130,600
19.	15/01/2010	Askari Bank Limited	Saima Trade Tower Branch, Karachi	020101062028	40026023	130,000
20.	06/04/2010	MCB Bank Limited	Stock Exchange Branch, Karachi	3302-7	3115806	5,000
21.	23/04/2010	Askari Bank Limited	Saima Trade Tower Branch, Karachi	020101062028	30823859	150,000



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Sr. No.	Date	Bank	Branch	Bank Account No.	Cheque No.	Amount Transferred to YT (Rs.)
22.	07/05/2010	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1473924	51,000
23.	25/05/2010	Askari Bank Limited	Saima Trade Tower Branch, Karachi	020101062028	40026049	26,000
24.	14/06/2010	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1473932	123,000
25.	02/08/2010	Askari Bank Limited	Saima Trade Tower Branch, Karachi	020101062028	30823867	324,000
26.	20/09/2010	MCB Bank Limited	Stock Exchange Branch, Karachi	3302-7	3115823	115,000
27.	18/10/2010	Askari Bank Limited	Saima Trade Tower Branch, Karachi	020101062028	31389805	251,000
<b>Total</b>						<b>3,614,600</b>

5. The pattern of Respondent's trading, his acquaintance with YT and transfer of funds by him to YT, *prima facie*, transpired that the trading by the Respondent was done on the basis of confidential and material non public information, disclosed to the Respondent by YT, pertaining to the investment decisions by BRRGM and FDIBL. Since it was evident from the available record that YT in his official capacity was privy to inside information pertaining to investment decisions by BRRGM and FDIBL and thus was an insider. Therefore, SCN was issued to the Respondent as to why action should not be taken against him under section 15E of the Ordinance for engaging in Insider Trading. The details of the Correlated Transactions were annexed with the SCN. The Respondent was required to submit his written reply to the SCN within ten days of the date of the SCN and appear before the undersigned on February 06, 2012 for hearing in the matter.
6. The Respondent vide letter dated January 25, 2012 requested for extension in date of submission of reply to the SCN till March 5, 2012 and also requested for change in venue of hearing from Islamabad to Karachi. The Respondent was informed vide letter dated January 30, 2012 that his request for extension in time for submission of written reply till March 5, 2012 can not be acceded to, however in the interest of justice, date of submission of reply was extended till February 13, 2012. Moreover, the Respondent was informed that decision regarding his request for change in venue of the hearing will be communicated later on. Subsequently, vide letter dated February 11, 2012 Mr. Shahid Mehmood Tabassum of Shahid Kamboh Law Chambers ("**Representative of the Respondent**") requested for extension of 21 days in submission of written reply to SCN and also provided copy of authority letter from the Respondent to represent



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him in the matter of the SCN. The said request of the Representative of the Respondent was acceded to vide letter dated February 13, 2012 and the date of submission of written reply to the SCN was extended till March 5, 2012.

7. The Representative of the Respondent submitted the reply to the SCN vide letter dated March 3, 2012. The assertions made by the Legal Counsel in its written reply are summarized below:

i) The Respondent is dealing in stock exchange since 1995. During this period he had been engaged with different brokerage houses. The detail of which are as follows:

Sr. no.	Period	Title	Brokerage House
1	1995-96	Runner	Abdul Aziz Securities
2	1996-98	Settlement Incharge	Tahir Shafique Amin
3	1998-99	Manager	Amin Karim Dehdi
4	1999-00	Dealer	Haroon Suleman
5	2000-07	Dealer	MAC Securities
6	2007-08	Dealer	First National Equity
7	2008-todate	Dealer	Multiline Securities

While working in above mentioned positions, the Respondent engaged in equity trading for his own account.

ii) During the period from July 01, 2008 till January 31, 2011 the Respondent undertook bulk trading activities in 147 scrips. The Respondent purchased 87,736,225 shares through Multiline Securities (Pvt.) Limited ("MLS") and 68,855,600 shares through First National Equities Limited ("FNEL") and sold 82,923,568 shares through MLS and 64,215,200 shares through FNEL and incurred a loss of Rs. 12,935,699 on the total trading activity. Summary of trading by the Respondent in different shares and resulting profit and loss calculation was also provided with the reply.

iii) Out of 147 scrips traded by the Respondent during the period his trading in only 22 scrips, as given in SCN, matched with either BRRGM or FDIBL. Further out of 156.591 million shares purchased by the Respondent only 292,912 shares (0.18% of the total shares) have matched with either BRRGM or FDIBL. Moreover, out of 147.139 million shares sold by Respondent only 1.985 million shares (1.34% of the total shares) have matched with either BRRGM or FDIBL. The said figures clearly shows that the matching of trades with





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- BRRGM or FDIBL amounts to very insignificant and immaterial fraction of total trades which are completely accidental and unintentional.
- iv) The Respondent has not committed any willful act while trading in said shares. Keeping in view the current mechanism of trading in KSE it is impossible for a trader to know with whom he is trading. Since the act of the Respondent is not “willful” penalty under section 15-E of the Ordinance cannot be imposed on the Respondent. The Enquiry Team has shown a rather pick and choose approach by considering only few segments of the trading by the Respondent while completely ignoring his bulk trading activity.
- v) Admittedly, the Respondent and YT are familiar with each other over the last many years. Both have mutual business interests and have trading ties in the field of prize bonds and other commodities. Most of the time, Respondent buys prize bonds from YT. The payment of which are made by the Respondent through his personal bank account in order to clear his liabilities. The banking transactions during the Review Period were also in this context. Further, the payment through banking instrument strengthens the fact that they were conducting legal transactions in good faith. If the consideration of the payment were illegal, the payment could have been made through any channel other than the documented channel. YT had to make calls to the Respondent through mobile phone and sometime on landline telephone mostly as a payment reminder.
- vi) The Enquiry Team has acted in a discriminatory manner in obtaining and scrutinizing the telephone record of MSL and BRRGM. Since telephone records do not come under the definition of material and definite information, nobody can determine meaningful conclusion of any telephone conversation. In support of his argument the Representative of the Respondent relied on the judgment of Hon’able Supreme Court of Pakistan in the case of “Central Insurance Company & other vs. The CBR & others (1993 SCMR 1232)”.
- vii) The Respondent has never been subject to any enquiry or investigations under provisions of the Ordinance. The Respondent has no nexus with the BRRGM. The enquiry as mentioned in SCN was initiated against the BRRGM under section 21 of the Modaraba Companies and Modaraba (Floatation & Control) Ordinance, whereas SCN has been issued under section 15E of the Ordinance which is contrary to the law and with out proper jurisdiction. It would have been in the interest of justice that enquiry may have been initiated separately under the provision of the Ordinance.



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- viii) The definition of the “inside information” as stated in section 15B of the Ordinance has not been interpreted in the spirit and entirety of the section 15A to 15E of the Ordinance. A collective reading of the aforementioned sections along with section 15E of the Ordinance shows that the purpose and intent behind prohibition of insider trading is to prevent a person from making a gain or avoiding a loss by trading in listed securities based on inside information relating to such listed securities before the issuer of such securities disclose such information as required by section 15D of the Ordinance. In order to come within the ambit of section 15A of the Ordinance, the inside information, the insider and security should relate directly to the issuer. Further the investment decisions by an entity are never required to be made public in terms of section 15D of the Ordinance. Moreover, the investment decision by an entity cannot be concretely considered, as price sensitive information as there may be different investment decisions by different traders at the same time for the same shares. Therefore, the application of the section 15A to 15E to the Respondent in subject case is merely on the basis of hypothesis, conjecture and misunderstanding of the law.
- ix) The amendments to chapter III A of the Ordinance have not been properly legislated as they were introduced in the Ordinance through Finance Act 2008. This is contra to the Article 73 of the constitution of Islamic Republic of Pakistan. All the provisions contained in the Chapter III A of the Ordinance were added through section 6(2) of the Finance Act, 2008 with effect from June 27, 2008. The Finance Act is a culmination of a “Money Bill” which is passed by the National Assembly not by the Senate. The addition of Chapter III A in the Ordinance through Finance Act, 2008 is *ultra vires* of the Constitution and no action whatsoever can be initiated on the aforementioned provisions. In support of this argument the Representative of the Respondent also relied on the judgments of the Hon’able Supreme Court of Pakistan in the case of Mir Muhammad Idris vs. The Federation of Pakistan & others. The Legal Counsel also asserted that the said orders of the Hon’able Supreme Court of Pakistan are binding on the Commission and failure to abide by the same will renders all its actions completely unlawful and without jurisdiction. Therefore, the changes made in the section 15 of the Ordinance through Finance Act, 2008 are *ultra vires* of the Constitution of Pakistan and consequently the impugned SCN is also illegal and liable to be set aside.



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- x) The Representative of the Respondent requested that lenient view in the matter may be taken.
8. Subsequently, the date of hearing was fixed for March 30, 2012 at 10:30 a.m. at the Head Office of the Commission. On the said date, the Representative of the Respondent appeared along with authority letter from the Respondent. During the hearing the Representative of the Respondent while reiterating the arguments submitted through the written reply to the SCN and pointing out some corrections in the same made the assertion that payments were made in connection with business of the Respondent with YT and agreed to provide proof of said business between them. He also quoted a numbers of orders passed by the Commission for violation of section 15 A of the Ordinance and stated that in most of the cases there was direct/blood relationship between tipper and tippee, whereas in the instant case there is no direct/blood relationship between Respondent and YT. He further argued that since the Commission has taken lenient view in its previous orders; therefore, Commission should also take lenient view in this matter as well. It was further asserted by the Representative of the Respondent that since the enquiry was ordered by Registrar Modaraba, therefore, the SCN should also have been issued by him. He stated that copy of enquiry report was not provided to the Respondent. The copies of judgments relied on in the written reply to the SCN were also provided by him.
9. I have thoroughly analyzed and examined the facts, evidence and documents on record, in addition to the written replies to SCN and assertions made by the Representative of the Respondent during the hearing. My findings on the issues are as follows:
- i) It is established from the record that during the Review Period the Respondent was an active investor/trader in the market. The data provided by the Respondent regarding his trading during the Review Period corresponds to the data available with the Commission. Further, neither in written reply nor during the course of hearing, the Respondent or his Representative denied execution of any of the transactions mentioned in the SCN.
- ii) The contention of the Respondent that due to his bulk trading a minor percentage of his trading matched with BRRGM and FDIBL which is insignificant, immaterial and



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- completely accidental and unintentional is not true. The review of the Respondent's trading showed that Correlated Trading only occurred in illiquid scrips, whereas, no such pattern was observed in his trading in liquid scrip. Although the matched trading constitutes a minor percentage of the overall trading volume of the Respondent, however, when his trading volume in 22 illiquid scrips is considered, the matched volume constitutes major percentage of the same and resulted in significant profit to the Respondent. It is also observed that in most of the instances of Correlated Trading, only one leg (i.e. buy side or sell side) of the Respondent's trading matched with BRRGM or FDIBL, whereas, the other leg of the trading was executed in the market with other market participants. The trading pattern of the Respondent in the scrips mentioned in the SCN, illiquid nature of scrips and the amount of profit made in each instance clearly shows that the Correlated Trading with BRRGM and FDIBL was not accidental and unintentional and the scheme was thoroughly planned before execution of trading.
- iii) The Respondent's contention that the Correlated Trading was not intentional is untenable. It may be noted that trading pattern of the Respondent in the scrips, timing of placement of orders by Respondent and BRRGM/FDIBL clearly shows the intention of the Respondent. Although the current trading mechanism is based on anonymity of the buyer and seller, however, in order to circumvent this mechanism the Respondent selected scrips which were illiquid and the timing of the placement of orders by the Respondent and BRRGM/FDIBL also ensured that orders are matched. This discovery finds strength from the fact that during most of the trading days as mentioned in Table – I above, the buying and selling of the Respondent and BRRGM/FDIBL constituted major portion of market volume of that scrip.
- iv) The Respondent's contention that the Enquiry Team has shown pick and choose approach by considering few segments of the trading by the Respondent while completely ignoring his bulk trading activity is incorrect. It may be noted that the Respondent's complete trading activity during the Review Period was analyzed which showed matching transactions and dubious trading pattern in 22 scrips. Therefore, the SCN was only issued in reference to the Correlated Trading in 22 illiquid scrips.
- v) The Representative of the Respondent was also informed during the hearing that the Respondent's trading was under observation of Securities Market Division of the



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Commission since May 2009, however, during preliminary investigation no evidence of any link between the Respondent and any person (Tipper) at BRRGM/FDIBL could be found. Subsequently, when Registrar Modaraba initiated an enquiry into the affairs of BRRGM the Enquiry Team found concrete evidence of link between the Respondent and YT. The said findings of the Enquiry Team were subsequently communicated to Securities Market Division of the Commission. The SCN, thereafter, was issued to the Respondent after corroborating the information already available with the Securities Market Division and obtained from other sources with the information received from the Enquiry Team.

vi) During the hearing and in his written reply the Respondent admitted that YT is known to him for many years and they have combined business interests in the field of prize bonds and other commodities. During the hearing, the Representative was asked to provide any proof in this regard especially any documentary evidence that payments made by the Respondent to YT were in lieu of some other business transaction between them. The Representative of the Respondent during the hearing agreed to provide the said documentary evidence. Subsequently, the Legal Counsel vide letter dated April 04, 2012 provided the following documents:

- a) Statement on non judicial paper by the Respondent stating that he knows YT for many years and the payment of Rs. 3.60 million from his account to YT is related to prize bonds.
- b) Copy of Partnership Deed of M/s A.Y Enterprises made at Karachi on July 04, 2007 between the Respondent and YT. The Deed mentioned that nature of business of partnership shall be trading of Prize Bonds, Gold, Import, Export, Wholesaler, Retailers, Distributer, General Trading & Supplies and or any other related business(s) or any other business with mutual consent of all the partners. The profit sharing percentage was 50%.

However, no documentary evidence was provided which could prove that the payments, as mentioned in the SCN, were made in connection with the business mentioned in the Partnership Deed i.e. tax return of the Partnership, copies of receipts, vouchers any other



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- documentary evidence. Mere presentation of the Partnership Deed and payment through banking channel does not prove that payments made by the Respondent to YT were result of any other business transaction between them. Therefore, in absence of any documentary evidence the said contention of the Respondent cannot be accepted.
- vii) With regard to the contention of the Respondent regarding telephonic record, it may be noted that nowhere in the SCN it is mentioned that the inside information was communicated through telephone. The SCN only stated that the Respondent and YT were in contact with each other through telephone and mobile, which shows that they knew each other. Nowhere in the SCN it is mentioned that the inside information was communicated by telephone or mobile. The reference of the telephonic recording which is admitted by the Respondent was given in the SCN only to establish link between Respondent and YT. The trading pattern in the scrips mentioned in Table 1 clearly shows that the Respondent's trading was based on inside information which resulted in considerable gain to the Respondent and a part of which was transferred to YT from time to time.
- viii) The contention of the Respondent that the enquiry was initiated under section 21 of the Modaraba Companies and Modaraba (Floatation & Control) Ordinance 1980, whereas SCN was issued under section 15 E of the Ordinance and hence is contrary to law and with out proper jurisdiction is not correct. It may be noted that under Modaraba Companies and Modaraba (Floatation & Control) Ordinance, 1980, the Registrar of Modaraba has the powers to order enquiry into the affairs of any modaraba, whereas, the powers under Section 15 E of the Ordinance have been delegated to Director (SM), therefore, Registrar of Modaraba does not have the power to initiate proceeding under the section 15 E of the Ordinance. Moreover, it may be noted that the SCN was not issued only on the basis of the findings of the enquiry of BRRGM, the Respondent's suspicious activities in the market were being monitored well before initiation of enquiry of BRRGM and during the course of enquiry only the tipper i.e. YT was identified. The findings of the Enquiry Team were analyzed and verified again by the Securities Market Division of the Commission and only after thorough review and considering all facts on record, SCN was issued to the Respondent. Moreover, initiation of proceedings under section 15 E of the Ordinance does not require initiation of any formal enquiry.



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- ix) The interpretation of the section 15A to 15E of the Ordinance by the Respondent is also not correct. The said sections do not state that the inside information includes only that information that should be disclosed to the general public. The reading of Section 15 (B) (c) of the Ordinance transpires that inside information also includes information relating to the client's pending orders. It may be noted that section 15 (B) (a) of the Ordinance is worded to cover wide range of information that may relate to listed securities which is not in public domain and is price sensitive in nature. Therefore, any information regarding trading decision by any person is price sensitive in nature. In the instant case YT was taking investment decisions on behalf of BRRGM and FDIBL and communicated the said decisions to the Respondent before execution. This information although is not required to be disseminated to general public but it still qualifies as inside information. If the said information regarding investment decisions of BRRGM and FDIBL would have been available to public, same would have had an effect on the price of scrips thus it constitutes to be inside information. The Section 15 (D) of the Ordinance requires every listed company to inform the public as soon as possible regarding inside information which directly concerns the listed securities. However, it may be noted that decisions by any investor/trader to trade in a scrip is never in knowledge of the listed company, therefore, the listed company cannot possibly disseminate the same to the general public. Therefore, it is entirely incorrect to restrict the scope of these provisions to information that the issuers are bound to disclose in terms of section 15 D of the Ordinance as it would defeat the intent of the law. Further, the definition of the term "Inside Information" is wide enough to cover investment decisions which have an impact on the price of listed securities.
- x) With regard to the Respondent's assertion regarding the amendment in the section 15 of the Ordinance through Finance Act 2008, the Representative of the Respondent relied on the judgment of the Honorable Supreme Court of Pakistan in Constitutional Petition No. 58 of 2010 Mir Muhammad Idris vs. Federation of Pakistan & others. While discussing this issue, it may be noted that this forum is not competent to adjudicate on the constitutional issues and vires of the law. However, I am in complete agreement with the argument of the Representative of the Respondent that the orders of the Supreme Court and High Court are considered as precedent and are binding on this forum. However, it



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needs to be considered whether the judgment of the superior judiciary constitutes as a binding precedent or whether the superior judiciary has limited the scope of its judgment to a set of facts in a given case. In the judgment relied by the Representative of the Respondent the Hon'able Supreme Court of Pakistan, while considering the concerns expressed by the Attorney General of Pakistan and effect of the judgment on other amendments carried out through Finance Act has categorically held as under:

*“As for the fear expressed by the learned Attorney General, suffice it to say that no other provision either of the Act of 1974 or of any other law amended by a Finance Act having been challenged by anyone before us, this judgment will be confined to the issue involved in the present case, namely, the unconstitutionality of the amendment of section 11(3)(d) of the Act of 1974 brought about by the Finance Act, 2007.”*

Therefore, the judgment relied on by the Representative of the Respondent is not relevant to the instant case. The Representative of the Respondent did not provide any case law wherein the section 15 A-E is held to be *ultra vires* of the Constitution. Therefore, in absence any findings or judgment to this effect from any superior court, sections 15 A-E of the Ordinance is valid law.

- xi) With regard to the reference of different orders passed by the Commission for violation of Section 15A of the Ordinance it may be noted that the referred orders were passed on the basis of the facts peculiar to each case and lenient views were taken only in those cases where either the quantum of violation was subsequently found to be relatively small or after preponderance of evidence on record, the balance of the probability was in favour of the accused. In the instant case the Respondent or his Representative has failed to provide any evidence which could create doubt that Respondent has not traded on the basis of inside information. The facts available on the record clearly establish that YT by virtue of his position was in possession of inside information. YT and the Respondent knew each other and were in contact with each other during the period when Correlated Trading with BRRGM/FDIBL was executed. Moreover, the Respondent has failed to provide any evidence that the payments made by him to YT related to any business transaction by their partnership firm. In absence of any cogent evidence to the contrary





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the transfer of money can only be attributed to the amount of gain made as a result of Correlated Trading.

- x. It also needs to be noted that it is not necessary that penalty should be confined only to willful acts of omission and commission in contravention of the provisions of the enactment. For proper enforcement of provisions of Law, it is common knowledge that absolute liability is imposed and the acts without *mens rea* are made punishable. The notion that a penalty or a punishment cannot be cast in the form of an absolute or no fault liability but must be preceded by *mens rea* must be rejected. The classical view that "no *mens rea*, no crime" has long ago been eroded especially regarding economic crimes. I am of a view that the Ordinance is intended to regulate the securities market and the related aspects, the imposition of penalty, in the given facts and circumstances of the case, cannot be tested on the ground of "no *mens rea*, no penalty". For breaches of provisions of Ordinance and secondary legislation made thereunder, which are civil in nature, *mens rea* is not essential.

10. Based on the contentions submitted in the written reply and the arguments made by the Representative of the Respondent during the course of hearing it is abundantly clear that YT, by virtue of his position at both BRRGM and FDIBL was in possession of material inside information regarding the investment decisions of BRRGM and FDIBL. YT being privy to the inside information by virtue of his influential position at BRRGM and FDIBL passed on said inside information to the Respondent on the basis of which Respondent traded in the scrips mentioned in Table -1 above, and this fact is clearly evident from the trading pattern. In terms of Section 15(A)(2) of the Ordinance, insider trading shall include:

*(a) an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals;*

*(b) any other person to whom inside information has been passed or disclosed by an insider person transacting any deal, directly or indirectly, using inside*



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*information involving listed securities to which the inside information pertains, or using others to transact such deals;"*

Therefore, the contravention of section 15A(1) stands established against the Respondent.

11. In light of the above, Respondent is hereby held guilty of contravention of section 15 (A) (1) and in exercise of the powers under Section 15E of the Ordinance, I hereby direct the Respondent to deposit a fine of Rs. 4.500 million (Rupees Four million Five Hundred Thousand Only).
12. The matter is disposed of in the above manner and the Respondent is directed to deposit the fine as mentioned in paragraph 11 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.
13. 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 or on the same facts for violation of any other provision of the Ordinance.

  
**Imran Mayat Butt**  
Director/HOD (MSCID)

**Announced on May 31, 2012**

**Islamabad.**