



Securities and Exchange Commission of Pakistan

Securities Market Division

Through Courier

Before The Director / HOD (MSCID)

In the matter of Show Cause Notice issued to

Falki Capital (Pvt.) Limited, Broker Islamabad Stock Exchange Limited

Date of Hearing:

October 10, 2012

Present at the Hearing:

Representing Falki Capital (Pvt.) Limited

(i) Brig(R) Fateh Khan Malik

Chief Executive Officer

(ii) Mr. Faisal Fateh

Chief Financial Officer

(iii) Mr. Kaleem Arshad

Legal Council

Assisting the Director (SMD)

(i) Mr. Muhammad Ali

Deputy Director

ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. 1(07) BS/KSE/MSW/SMD/2011/04 dated September 24, 2012 ("SCN") issued to Falki Capital (Pvt.) Limited ("Respondent"), Broker Islamabad Stock Exchange Limited ("ISE") by the Securities and Exchange Commission of Pakistan ("Commission") under Section 22 of the Securities and Exchange Ordinance, 1969 ("Ordinance") and Rule 8 of the Brokers and Agents Registration Rules, 2001 ("Brokers Rules").

2. The brief facts of the case are that the Respondent is registered with the Commission under the Brokers Rules. On perusal of the trading data of the Karachi Stock Exchange Limited ("KSE") for the month of June and July 2012, it was noted that the Respondent's client namely Tahir Rehman ("Client") had been engaged in selling and then squaring up his position in

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different scrips through trading as Inter - Exchange client of Invest Capital Markets Limited, Broker KSE ("KSE Broker").

3. During the month of June and July 2012, the Client first sold and then squared up positions in the scrips of Attock Refinery Limited ("ATRL"), Engro Foods Limited ("EFOODS"), Engro Corporation Limited ("ENGRO"), Fauji Fertilizer Company Limited ("FFC"), Lucky Cement Limited ("LUCK"), Pakistan Petroleum Limited ("PPL") and Pakistan State Oil Company Limited ("PSO").

4. The Commission vide its letter dated July 27, 2012 sought clarification from KSE Broker regarding short sales executed by the Respondent's Client. In response the KSE Broker forwarded the letter dated August 01, 2012 of the Respondent wherein the Respondent admitted its mistake. The Respondent stated that trades executed by the Client were erroneously entered by its trader and upon realization the same trades were squared up.

5. The response of the Respondent provided by the KSE Broker was not considered satisfactory as it did not contain any evidence and justification regarding the execution of short sales by its Client through KSE Broker. Consequently, SCN dated September 24, 2012 was issued to the Respondent under Section 22 of the Ordinance and the Brokers Rules stating that the Respondent has prima facie contravened Clause A (2) and A (5) of the Code of Conduct set forth under the third schedule of the Brokers Rules. The Respondent through this SCN was asked to explain its position through written reply within ten (10) days of issuance of SCN and also appear in person or through an authorized representative before the undersigned at Commission's Head Office, Islamabad on October 10, 2012 at 03:30 p.m. for hearing.

6. The Respondent vide letter dated October 03, 2012 submitted its response to the SCN. The important contentions raised in the response are reproduced hereunder:-

"In response we beg to submit that we are relatively new member of Islamabad Stock Exchange operating since end of 2009 having unblemished record with no such case in the past. For the facilitation of our clients and for the rapid execution of orders at the best market rates during buying and selling of shares, we have got online trading system from KSE member."



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"The said client "Mr. Tahir Rehman" became our client a month before this incident. All his trade was executed online through KSE member having better system but they also failed to notify us of any anomalies. The trader dealing this case was newly appointed and was on probation.

"We are the client dealing with the KSE Members. We only have online trading system with Karachi member and there is no back office system available for the trades done through KSE broker to automatically check short/blank selling. Our settlement office has clear instructions to immediately inform the management in case of delivery default for checking short selling. Never in our history we have a single transaction of delivery default. The transaction reports failed to show us any short selling as the client positions were always squared up."

"We have already changed our order execution system after this incident. No sale order is queued till it is checked manually with the back office and confirmed with the records of the CDC reports. This time taking process is the only possible way as there is no other system present from KSE broker for the time period."

"In the light of the above facts we request your honor to kindly drop the charge against us taking a lenient view because of our past record and unintentional lapse. We assure the commission of our best efforts to maintain an unblemished record in future too."

7. On the date of hearing Brig (R) Fateh Khan Malik, ("CEO"), Mr. Faisal Fateh ("CFO") and Mr. Kaleem Arshad ("Legal Council") appeared on behalf of the Respondent. They made the following submissions during the course of hearing:

- i) The CEO contended that the above-mentioned transactions were not conducted with malafide intentions and no material benefit was gained through these transactions. These transactions were executed due to the mistake of the one of Respondent's trader who was recently employed.



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- ii) The CEO argued that in this particular case the Client made the short selling through KSE Broker by using online trading terminal due to which Respondent was unable to detect the trading pattern of the Client. As soon as it came to the knowledge of the Respondent that short sales were executed by Client, his trading account was closed immediately.
- iii) The CFO emphasized that no case of short selling was made previously against the Respondent. There is clear instruction by the Respondent to its traders to freeze the trading of the clients who had no buying position in the scrip.
- iv) The CEO prayed that the Commission may take a lenient view in this matter and drop the proceedings together with the show cause notice because the said trades were merely result of ignorance and unawareness, without having any fraudulent intentions.

8. After a detailed and thorough perusal of the facts, evidence/information available on record, contentions and averments made by the CEO / CFO during the course of the hearing, it is established that the Client of the Respondent placed the sale orders without having pre-existing interest. It was the responsibility of the Respondent to monitor all trading activities being carried out by its clients in order to track and prevent any transaction being made in violation of any applicable rules and regulations. The Respondent has failed to exercise due care, skill and diligence in conduct of its business and has also failed to abide by the provisions of the Rules & Regulations issued by the Commission and ISE from time to time, thus violated the Clause A(2) and A(5) of the Code of Conduct set forth under the third schedule of the Brokers Rules and which in turn is violation of Rule 12 of the Brokers Rules read with Rule 8 of the Brokers Rules.

9. The violation of the Rules and Regulations is a serious matter which entitles the Commission to suspend the Respondent's membership but I have elected not to exercise this power at present. However, in exercise of the powers under Section 22 of the Ordinance, I hereby impose on the Respondent a penalty of Rs. 25,000 (Rupees Twenty Five Thousand only). Additionally, I strongly advise the Respondent to take immediate measures and put in place



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proper system and checks to eliminate the occurrence of such instances in future. I again direct the Respondent to ensure that full compliance be made of all rules, regulations and directives of the Commission in the future for avoiding any punitive action under the law.

10. The matter is disposed of in the above manner and the Respondent is directed to deposit the fine in the account of the Commission being maintained in the designated branches of MCB Bank Limited not later than thirty (30) days from the date of this Order and furnish the copy of the deposit challan to the undersign.

11. 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 / HOD (MSCI)

Announced on November 8, 2012
Islamabad.