



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division

NIC Building Jinnah Avenue, Jinnah Avenue, Islamabad

Before the Director (Securities Market Division)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Mr. Zakir Mehmood, Director of Habib Bank Limited

Date of Hearing: 02/06/2011

Present at Hearing:

Representing the Respondent: (i) Ms. Nausheen Ahmad
Company Secretary & Head Legal
Habib Bank Limited

Assisting the Director (SMD): (i) Mr. Nazim Ali,
Assistant Director (SMD)

Order

This order will dispose of the proceedings initiated under Section 224(4) of the Companies Ordinance, 1984 (“**Ordinance**”) by the Securities and Exchange Commission of Pakistan (“**Commission**”) through Show Cause Notice No. S.M(B.O)C.O.222/1(801)11 dated 17/05/2011 (“**Notice**”) issued to Mr. Zakir Mehmood (“**Respondent**”) a Director of Habib Bank Limited (“**Issuer Company**”).

2. The facts of the matter leading up to aforesaid Notice are that it was observed from the record of this office that the Issuer Company is a public listed company and the Respondent is on its Board of Directors. It was further observed that the Respondent beneficially owns equity securities of the Issuer Company. Thus, pursuant to provisions of Section 222(2)(b) of the Ordinance, he was required to file his return of beneficial ownership on prescribed form, within the stipulated time period. But, he failed to discharge his said obligation which attracts penal provisions contained in Section 224(4) of the Ordinance.



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3. Section 222 of the Ordinance deals with the submission of statements by beneficial owners of listed securities. For convenience the provisions of the said Section are reproduced hereunder:-

- (1) *Every director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company who is or has been the beneficial owner of any of its equity securities, and every person who is directly or indirectly the beneficial owner of more than ten per cent of such securities, shall submit to the registrar and the Commission a return in the prescribed form containing the prescribed particulars pertaining to the beneficial ownership of such securities and notify in the prescribed form the particulars of any change in the interest aforesaid.*
- (2) *The period within which the said return is to be submitted to the registrar and the Commission shall be—*
 - (a) *where the person occupies the position or office specified in sub-section (1), or is a person whose interest as beneficial owner of securities requiring submission of the return as stated in the said sub-section subsists on the commencement of this Ordinance, within thirty days from such commencement;*
 - (b) *in any other case, including a case where the company is listed on the stock exchange after the commencement of this Ordinance or after the person has occupied the position or office specified in sub-section (1) or has acquired interest as beneficial owner of securities as aforesaid, within thirty days of occupying the office in the company or acquisition of interest as beneficial owner requiring submission of the return aforesaid or listing of the company on the stock exchange, as the case may be;*
 - (c) *where there is any change in the position or interest as aforesaid including a change in the beneficial ownership of any equity, security, within fifteen days of such change; or*
 - (d) *where the Commission by an order so requires, within such period as may be specified in such order.*

4. It is worth mentioning that in order to provide an opportunity to directors/beneficial owners of listed companies to file their over due returns of beneficial ownership without facing penal action, the Commission through Notices dated 07/09/2009 and 21/09/2010 asked them to file their returns of beneficial ownership with Head Office of the Commission by 31/10/2009 and 31/10/2010 respectively and to ensure timely compliance of Section 222 of the Ordinance in future. The aforesaid Notices were sent to all listed companies and were also disseminated through stock exchanges and print media.



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5. As the Respondent failed to file his return of beneficial ownership, the Company Secretary of the Issuer Company was, therefore, asked vide letter dated 02/12/2010 to collect returns of beneficial ownership on Form 31/32 from the directors/beneficial owners of the Company including the Respondent alongwith reasons for non-filing of the same within the period stipulated in Section 222 of the Ordinance and to file the same with this office.

6. In response to aforementioned letter, the Respondent filed Form 31 with this Commission which shows that he is holding 235,789 shares of the Issuer Company. The said Form 31 further shows that he is on Board of Directors of the Company since 30/08/2007. Thus, he was required to file the said return with this Commission latest by 29/09/2007, but the same has been filed on 31/12/2010, with delay of 1,189 days in contravention of Section 222(2)(b) of the Ordinance . While, the Respondent did not file Form-32 for receipt of 10% bonus shares, 20% bonus shares and 10% bonus shares for the year 2008, 2009 and 2010 respectively, in contravention of Section 222(2)(c) of the Ordinance. The said defaults attract penal provisions of Section 224(4) of the Ordinance, which provides as under:-

“Whoever knowingly and wilfully contravenes or otherwise fails to comply with any provision of section 222, section 223 or section 224 shall be liable to a fine which may extend to thirty thousand rupees and in the case of a continuing contravention, non-compliance or default to a further fine which may extend to one thousand rupees for every day after the first during which such contravention, non-compliance or default continues”.

7. The Commission accordingly took cognizance of the aforesaid defaults and issued Notice to the Respondent under Section 224(4) of the Ordinance, calling upon him to explain through written reply alongwith documentary evidence, if any as to why action may not be taken against him pursuant to Section 224(4) of the Ordinance, for aforesaid contraventions of Section 222(2)(b) and Section 222(2)(c) of the Ordinance. The written reply in this regard was submitted by Company Secretary of the Issuer Company vide letter dated 30/05/2011. She, on behalf of the Respondent, stated that:-

“the delay in filing of Forms 31 and non filing of Form-32 as pointed out in your show Cause Notice dated May 17, 2011 was totally inadvertent and the Chief Executive or the Bank have not



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knowingly and willfully contravened the provisions of Section 222, 223 and 224 of the Companies Ordinance, 1984."

8. In order to provide an opportunity of being heard in person, hearing in the matter was fixed for 02/06/2011 at Commission's Karachi office. On the given date Ms. Nausheen Ahmed Company Secretary & Head Legal of the Issuer Company ("**Authorized Representative**") appeared before me on behalf of the Respondent and made the following submissions:-

- (i) *Failure to file the required return within the stipulated period was unintentional and it was never the intention of Respondent to conceal the facts nor act in any mollified way. Therefore, on receiving the notice, vide your letter dated December 02, 2010 we immediately filed the required return (i.e. form 31), but Forms-32 for receipt of bonus shares were overlooked. She submitted the Fom-32 for receipt of under reference bonus shares.*
- (ii) *The Respondent will comply with the requirement of Section 222 of the Ordinance within the prescribed time period in future.*


9. I have considered written submissions made on behalf of the Respondent as well as the verbal arguments advanced by the Authorized Representative during the course of personal hearing. The Respondent has admitted the default of late filing of the return of beneficial ownership with the contention that said default was not committed willfully and knowingly. The Respondent has assured for timely filing of the returns of beneficial ownership in future and requested to condone the default in question. In order to arrive at conclusion, I have also reviewed the available record which reveals that the Respondent has earlier filed Form 31 within the stipulated time period. The record further signifies that the Respondent has filed the return promptly on receipt of letter from the Commission. Considering the arguments advanced on behalf of the Respondent, I intend to agree with the contention of the Respondent and of the view that the late filing of the under reference return of beneficial ownership may not be willful. Therefore, a lenient view of the matter has been taken and the Respondent is hereby strictly warned to ensure timely compliance of Section 222 of the Ordinance in future.



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10. This order is issued without prejudice to any other action that the Commission/Registrar may initiate against the Respondent in accordance with the law on matter subsequently investigated or brought to the Notice of the Commission


(Imran Inayat Butt)
Director (SMD)

Islamabad.
Announced on June 30, 2011