



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

Before The Director (Securities Market Division)

In the matter of Show Cause Notice issued to

KASB Securities Limited

Date of Hearing:

August 31, 2009

Present at the Hearing:

Representing the KASB Securities Limited

(i) Mr. Farrukh H. Sabzwari

Chief Executive Officer

(ii) Mr. Kamran Ansari

CFO & Company Secretary

(iii) Mr. Iqbal L. Bawaney

Legal Counsel

Assisting the Director (SMD)

(i) Mr. Muhammad Atif Hameed

Deputy Director (SMD)

ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. 1(01)/KSE/MSW/SMD-South/2009/07 dated August 06, 2009 ("the SCN") issued to KASB Securities Limited ("the Respondent"), Member of the Karachi Stock Exchange (Guarantee) Limited ("KSE") by the Securities and Exchange Commission of Pakistan ("the Commission") under Section 22 of the Securities and Exchange Ordinance, 1969 ("the Ordinance") read with Rule 8 of the Brokers and Agents Registration Rules, 2001, ("the Brokers Rules").
2. The brief facts of the case are that the Respondent is a member of KSE and is registered with the Commission under the Brokers Rules. On June 23, 2009 the Respondent bought 6,000,000 shares of JS Growth Fund ("JSGF") at the rate of Rs. 3.70 per share which were sold through Respondent by its client JS Funds of Funds ("JSFF"). It was further noted that the Respondent sold the said 6,000,000 shares at the rate of Rs 3.70 on the very next day i.e



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June 24, 2009 which were bought by JSFF through another member of KSE i.e Crosby Securities Pakistan (Pvt.) Limited.

3. In order to ascertain the reasons behind execution of said transactions the Respondent was required, vide letter dated July 02, 2009, to clarify to the Commission about the nature of said transactions. The Respondent vide letter dated July 06, 2009 submitted a clarification stating that the trades in question were principally executed for the purposes of generating brokerage commission and the Respondent made a brokerage commission of Rs. 300,050/- for execution of said trades.
4. After perusal of the Respondent's reply to the above mentioned letter, which clearly showed that the Respondent had executed the said trades in order to generate commission income, the SCN was issued to the Respondent under Section 22 of the Ordinance read with the Brokers Rules stating that the Respondent has prima facie contravened Clause A(1), A(2), A(4) and B(4) of the Code of Conduct set forth under the third schedule of the Brokers Rules which in turn is a violation of Rule 12 of the Brokers Rules read with Rule 8 of the Brokers Rules. The Respondent was called upon to appear before the undersigned on August 20, 2009 for a hearing, to be attended either in person and/or through an authorized representative.
5. The Respondent submitted its reply to the SCN vide letter dated August 21, 2009. On Respondent's request the date of hearing was re-fixed for August 31, 2009. On the date of hearing Mr. Farrukh H. Sabzwari - Chief Executive Officer, Mr. Kamran Ansari - CFO & Company Secretary, and Mr. Iqbal L. Bawaney - Legal Counsel of the Respondent ("the Representatives of the Respondent") appeared before me on behalf of the Respondent.
6. The Respondent vide its written reply to the SCN and the Representatives of the Respondent during the course of hearing made the following submissions:-
 - i) On June 23, 2009 the Respondent purchased 6,000,000 shares of JSGF, which were sold by its client JSFF, with the intention of investment. However, on next day the Respondent's Investment Committee considered it appropriate to sell the said shares at the same price as it had already earned Rs. 300,050/- as commission which worked out a return of 493.32%. The Respondent stated that there is no bar on such transactions. The Respondent further stated that while selling the shares next day it was not aware of the buyer and it came to know about the purchaser only after receiving Commission's letter.



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- ii) The Respondent never intended or indicated to mean that the transactions were undertaken with the sole objective of generating commission. It only mentioned commission received as consideration. The subsequent sale of the shares was based on the decision of the Investment Committee as it considered that commission of Rs. 300,500/- was a reasonable return on one day's investment. There is no bar to such disinvestment which was its prerogative. All trades were carried out on by the Respondent on the trading system of KSE.
 - iii) The Respondent did not fail to maintain high standard of integrity and promptitude and fairness in conduct of its business or indulged in an act leading to interference of smooth and fair functioning of the market or failed to exercise skill and diligence in conduct of its business. There in no complaint against the Respondent and there is no aggrieved party. The said trades were genuine investment where securities changed hands and consideration was passed so there is no question of creating a false market. The said trades were not detrimental to the interest of the investors, no one was defrauded and no one suffered any loss due to these transactions.
 - iv) The Respondent did not violate any provisions of the Rule 8 of the Brokers Rules.
 - v) The Section 22 of the Ordinance is not attracted in this case as the said section relates to imposition of substantial penalty for willful violation which is not the case.
 - vi) The Section 22 (c) of the Ordinance cannot be invoked as the provisions of the Brokers Rules are self contained and penal provisions have already been provided. The Respondent also provided copies of a number of court judgments wherein it was stated that in case same violation is addressed in a special law and in a general law and both impose penalty, then only the provisions of the special law will be applicable. In the current case Brokers Rules is a special law and Ordinance is general law.
7. I have considered the contentions of the Respondent and the issues raises therein and the same are addressed point wise by me below:
- i) With regard to the Respondents contention that the shares in question were sold by the decision of Investment Committee, the Respondent was asked to provide minutes of such meeting. However, the Representatives stated that no such minutes are maintained for the committee's meetings and all decisions are made verbally. It is surprising to note that the Respondent, being a reputed brokerage



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house and a listed company, does not maintain minutes of the investment committee meetings. Therefore, in absence of any documentary evidence from the Respondent, which proves that the sale of the shares in question was made only on the basis to disinvest the shares and not to generate commission income, the said contention of the Respondent cannot be accepted as a valid reason. Further, it is also surprising to note that on the June 24, 2009 when the shares in question were sold by the Respondent the quantum, price and timings of orders placed for sale of shares exactly matched with the quantum, price and timings of purchase orders placed by the JSFF as a result of which all the sale orders of the Respondent matched with buy order of JSFF (details given in Table - I below). This situation seems to be too good to be a coincidence and rather gives an indication that precise placement of buy and sell orders were intentional and not a mere coincidence. Further, the sale of 6,000,000 shares of JSGF, which is not liquid scrip, also indicates that simultaneous buying and selling by JSFF and the Respondent was intentional.

TABLE - I

Client Name	Instrument Code	Buy or Sell	Quantity	Price	Order Time Stamp
JS Funds of Funds	JSGF	B	500,000	3.7	944270031
KASB Securities Limited	JSGF	S	500,000	3.7	944300001
KASB Securities Limited	JSGF	S	500,000	3.7	944340015
JS Funds of Funds	JSGF	B	500,000	3.7	944350041
KASB Securities Limited	JSGF	S	500,000	3.7	944380001
JS Funds of Funds	JSGF	B	500,000	3.7	944390010
KASB Securities Limited	JSGF	S	500,000	3.7	944410001
JS Funds of Funds	JSGF	B	500,000	3.7	944410046
KASB Securities Limited	JSGF	S	500,000	3.7	944440023
JS Funds of Funds	JSGF	B	500,000	3.7	944450001
JS Funds of Funds	JSGF	B	500,000	3.7	944470020
KASB Securities Limited	JSGF	S	500,000	3.7	944470025
JS Funds of Funds	JSGF	B	500,000	3.7	944500021
KASB Securities Limited	JSGF	S	500,000	3.7	944500032
KASB Securities Limited	JSGF	S	500,000	3.7	945470001
KASB Securities Limited	JSGF	S	500,000	3.7	945510028
JS Funds of Funds	JSGF	B	500,000	3.7	946000021
JS Funds of Funds	JSGF	B	500,000	3.7	946130004
KASB Securities Limited	JSGF	S	500,000	3.7	946410005
JS Funds of Funds	JSGF	B	500,000	3.7	946440017
KASB Securities Limited	JSGF	S	500,000	3.7	946450021
JS Funds of Funds	JSGF	B	500,000	3.7	946470012
JS Funds of Funds	JSGF	B	500,000	3.7	947040021
KASB Securities Limited	JSGF	S	500,000	3.7	947050005



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- ii) With regard to the Respondent's assertion that it never intended or indicated to mean that the transactions were undertaken with the sole objective of generating commission, the extracts of the Respondent's letter dated July 6, 2009 are reproduced hereunder:

"The transaction in question was principally executed for the purpose of generating broking commission. On the subject transaction, the Company made commission of Rs. 300,050 and that was the consideration behind the transaction. The sale transaction was executed on the KATS and we only come to know of the counter party through your aforesaid letter."

It is clear from the above that the Respondent executed the trades in question in order to generate a handsome amount of brokerage commission. Further, the reply of the Respondent never mentioned that the shares were bought with the intention of investment.

- iii) With regard to the Respondent's assertion that the trades in question did not interfere in the fair and smooth functioning of the market, it may be noted that the average trading volume in JSGF during the two months before June 23, 2009 was in the range of 266,000 shares. However, 6,036,000 shares were traded on June 23, 2009 out of which 6,000,000 shares were traded between Respondent and JSFF. Moreover, 25,777,500 shares were traded on June 24, 2009 out of which 6,000,000 shares were traded between the Respondent and JSFF (details given in Table - II below).

TABLE - II

Date	Name	Bought Qty	Average Buy Price (Rs.)	Sold Qty	Average Sell Price (Rs.)	Closing Price (Rs.)	Market Volume	% to Market Volume (Buy)	% to Market Volume (Sell)
23.06.09	KASB Securities Limited	6,000,000	3.70			3.69	6,036,000	99.40%	
23.06.09	JS Funds of Funds			6,000,000	3.70	3.69	6,036,000		99.40%
24.06.09	KASB Securities Limited			6,000,000	3.70	3.80	25,777,500		23.28%
24.06.09	JS Funds of Funds	6,000,000	3.70			3.80	25,777,500	23.28%	



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The abovementioned facts indicate that the trades on June 23, 2009 created impression in the market about the active trading in the scrip and based on this other market participants also started trading in the scrip on June 24, 2009. This is also very much evident from the trading volume of the JSFG as given in Table III below that after abnormal turnover on June 23, 2009 and exceptionally high volume on June 24, 2009, the volumes in the scrip suddenly dried down. It was further observed that on June 23, 2009 JSFG had the third highest trading volume at KSE whereas on June 24, 2009 JSFG was the top volume leader at KSE.

TABLE - III

Trading Date	Day Traded Volume	Day Traded Value
6.15.2009	1,000	3,795
6.16.2009	355,500	1,399,220
6.17.2009	120,500	481,575
6.18.2009	161,500	646,605
6.19.2009	22,000	87,595
6.22.2009	213,000	799,675
6.23.2009	6,036,000	22,332,500
6.24.2009	25,777,500	94,471,375
6.25.2009	136,500	520,325
6.26.2009	275,000	1,039,705
6.29.2009	68,500	260,625
6.30.2009	26,500	102,055

- iv) The Respondent's assertion that it did not violate any provision of the Brokers Rules is not correct. By executing the trades in question with the prime objective of generating commission income the Respondent has violated the Code of Conduct set forth under the Brokers Rules which clearly prohibits the members of exchanges to execute trades only for generating commission income. In this connection Clause B. (4)(1) of Code of Conduct is reproduced here as under:

"4. Business and commission. - (1) A broker shall not encourage sales or purchase of securities with the sole object of generating brokerage or commission."

Furthermore, it may be noted that the aforementioned trades did become a part of overall trading volume on June 23, 2009 and June 24, 2009 although these trades did not involve any change in ultimate beneficial ownership of shares as after one settlement cycle the shares remained in the possession/ownership of JSFF. However,



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such conduct by the Respondent resulted in abnormal volume in the scrip and thus the small investors were given impression of active trading. Therefore, the Respondent influenced the opinion of the investors and thus misled the investors. Moreover, the trades in question interfered in the smooth and fair functioning of the stock market. Thus it was a failure on the Respondent's part to act with due care, skill and diligence in the conduct of its business resultantly violating the code of conduct as enshrined in the Brokers Rules.

- v) With regard to the Respondents contention that Section 22 of the Ordinance is not invoked in this case as the section uses the word "willful", it may be noted that the said argument has already been addressed in detail by the Appellate Bench of the Commission vide its order dated March 4, 2009 in the matter of "Pakistan Electron Limited, Masood Textile mills Limited and Lahore Stock Exchange (Guarantee) Limited VS Mr. Arif Mian, ED (SMD)" (copy of the order is available on the Commission's website). The relevant portion of the said order is reproduced here as under.

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In one of the case titled Shaukat Baig vs. Shahid Jamil, PLD 2005 SC 530, it has been held that the term "willful" in common sense means voluntary or intentional. In another case titled Pakistan Paper Corporation Limited vs. Secretary Federal Ministry of Finance, 1984 CLC 2456 the word wilfully is defined as an act done deliberately and intentionally, not by accident or inadvertence, but so that the mind of person who does the act goes with it. In another case also cited titled Jalaluddin F.C.A vs. Commissioner SEC, 2005 CLD 333, where the meaning of willful in context of duty of auditor has been discussed, it was held that:

"whereas intent is a necessary ingredient of willfulness, impropriety is not (1960) 30 Com cases 523. it is therefore not necessary to prove that the default committed by the Appellant was mala fide."

Reliance was also placed on case titles City Equitable Fire Insurance Co Ltd Re, 1925 Ch 407 referred to in 2005 CLS 333:

"a default, in case of breach of duty, will be considered "willful" even if it arises out of being recklessly careless, even though there may not be knowledge or intent"

....."



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Further, the Respondent's letter dated July 6, 2009 clearly shows that the trades in question were executed intentionally for generating commission income which also created false impression in the market. Moreover, as stated above that on June 24, 2009 when the shares in question were sold by the Respondent the quantum, price and timings of orders placed for sale of shares precisely matched with the quantum, price and timings of purchase orders placed by the JSFF which shows that the order were placed by Respondent and JSFF in such a way to ensure that they match with each other.

- vi) With regard to the Respondent's contention that Section 22(c) of the Ordinance cannot be invoked as provision of the Brokers Rules are self contained and penal provision have already been provided, it may be noted that Brokers Rules is a secondary or subordinate legislation, made under the clause (b) of Section 43 of the Securities and Exchange Commission of Pakistan Act, 1997 read with Section 5A of the Ordinance. The Rules are made to implement and administer the requirements of primary legislation. The Ordinance is a primary legislation and in case of any conflicting provisions of law, the Ordinance prevails. The Commission therefore, can impose penalty against the broker under Section 22 of the Ordinance.
8. Considering the above facts and the contentions of the Respondent, it is established that the Respondent executed the trades in question in order to generate commission income. Moreover, the abovementioned trading activity of the Respondent interfered in the fair and smooth functioning of the market and also damaged the interest of other investors who were trading in the stock market thus violating the Code of Conduct set forth under the Brokers Rules which in turn is a violation of Rule 12 of the Brokers Rules. In terms of Rule 8 of the Brokers Rules where the Commission is of the opinion that a broker has inter alia failed to follow any requirement of the Code of Conduct, or has violated any Rule of the Brokers Rules, the Commission may take action under Rule 8(a) or 8(b) of the Brokers Rules. Further, in terms of Section 22 of the Ordinance if any person fails to contravenes or otherwise fails to comply with the provisions of this Ordinance or any rules or regulations made thereunder the Commission may, if it is satisfied after giving the person an opportunity of being heard that the refusal, failure or contravention was willful, by order direct that such person shall pay to the Commission by way of penalty such sum not exceeding fifty million rupees as may be specified in the order.



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9. In light of the above i.e. the fact that the Respondent has violated the Section 22 of the Ordinance read with Rule 8 of the Brokers Rules, I hereby impose on the Respondent a penalty of Rs. 600,000/- (Rupees Six Hundred Thousand only). I would further 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 undersigned.
11. The 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
Securities Market Division

Announced on February 24, 2010
Islamabad.