



Through Courier

Before The Director / HOD (Market Surveillance and Special Initiative Department)

In the matter of Show Cause Notice no. issued to Mr. Jawwad Faisal, Chief Financial
Officer of Service Industries Limited

under Section 15 E(3) of the Securities and Exchange Ordinance, 1969

Date of Hearing:

January 22, 2015

Present at the Hearing:

- | | |
|------------------------------|--|
| (i) Mr. Jawwad Faisal | Chief Financial Officer,
Service Industries Limited |
| (ii) Mr. Rashid Sadiq | Authorized Representative of Mr. Jawwad Faisal |
| Assisting the Director (SMD) | |
| (i) Ms. Tayyaba Nisar | Deputy Director |

ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. SMD/MSW/SRVI/75/2014 dated December 03, 2014 (“**the SCN**”) issued by the Securities and Exchange Commission of Pakistan (“**the Commission**”) under Section 15E(3) of the Securities and Exchange Ordinance, 1969 (“**the Ordinance**”) to Mr. Jawwad Faisal, Chief Financial Officer of Service Industries Limited (“**the Respondent**”).
2. The brief facts of the case are that the Respondent is the Chief Financial Officer (“**CFO**”) of Service Industries Limited (“**SRVI**”). SRVI is listed at Karachi Stock Exchange Limited (“**KSE**”) and Lahore Stock Exchange (“**LSE**”) with a total paid up capital of 12,028,800 shares.



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3. **SRVI** in its notice dated August 20, 2014 addressed to the KSE and LSE, informed that meeting of Board of Directors (“**BOD**”) of SRVI will be held on August 28, 2014 to consider the Half Yearly Accounts of the company for the period ended June 30, 2014. SRVI through its notice dated August 28, 2014, announced the half yearly results for the period ended on June 30, 2014 declaring Earning per Share (“**EPS**”) of Rs. 39.57, as compared to the last year’s EPS of Rs. 29.29 registering an increase of 35%. SRVI also announced 100% interim cash dividend.
4. The perusal of trading data of KSE for the period from August 11, 2014 till August 28, 2014 (“**the Period**”) showed that the share price of SRVI witnessed considerable increase. The share price opened at Rs. 533.76 on August 11, 2014 and closed at Rs. 631.02 on August 28, 2014.
5. The review of the trading data of KSE for the period from August 11, 2014 to August 18, 2014 transpired that Service Provident Fund (“**the Fund**”) bought 53,400 shares of SRVI with an average price of Rs. 536.477 per share.
6. The Commission vide letters dated September 30, 2014, October 15, 2014, October 27, 2014 and November 11, 2014 sought the information from SRVI which included details regarding the BOD meeting of SRVI held on August 28, 2014, copy of the trust deed of the Fund, details of the Investment Committee (“**IC**”) of the Fund and its meetings vide which the decision of Investment in the shares of SRVI by the Fund, etc.
7. The review of documents and information provided by RS Corporate Advisory Services (Pvt) Limited, the Authorized Representative for SRVI and the Fund (“**the Authorized Representative**”), showed that Board of Trustees of the Fund consist of members of senior management of SRVI; details of the same are as follows:

Sr. No.	Trustee of the Fund	Position in SRVI
1.	Mr. Ahmed Javed	Chairman
2.	Mr. Omar Saeed	Chief Executive Officer
3.	Mr. Arif Saeed	Director
4.	Mr. Hassan Javed	Director



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A certified true copy of the Board resolution passed by the Trustees of the Fund dated June 26, 2013 resolved that the members of IC will be following officers of SRVI, as given below:

Sr. No.	Investment Committee	Position in SRVI
1.	Mr. Muhammad Ejaz Chairman	Country Manager Marketing
2.	Mr. Muhammad Suhail Akhtar Chaudhry, Member	General Manager Domestic Sales

Further, the contents of the certified copy elaborated that IC will independently make the investment decisions of the Fund.

8. The Authorized Representative submitted that trading orders on behalf of the Fund are either placed by the members of IC or in their absence by any officer of the level of Manager or above as may be designated by IC. The list of said officers is as below:

Sr. No.	Investment Committee	Position in SRVI
1.	Mr. Liaqat Ali	Manager Import
2.	Mr. Masoom Raza	Manager Sourcing
3.	Mr. Usman Liaqat	Manager Finance
4.	Mr. Rana Saeed Ahmed	Manager Marketing Services
5.	Mr. Jawwad Faisal	Chief Financial Officer
6.	Mr. Yasir Ali	Manager Treasury

9. The Fund is maintaining its trading account with IGI Finex Securities (Pvt) Limited (“**the Brokerage House**”), TREC holder of KSE. The Commission sought information from the Brokerage House, vide letter dated September 30, 2014 pertaining to trading account maintained by the Fund, which comprised of the complete Standardized Account Opening Form (“**AOF**”), CDC-sub Account Form, Trading Statements, Financial Ledgers, copies of cheques and/or any other instrument used for receipts/payments, the statements showing receipts/payments and the telephonic recording for placement of order.
10. The information received by the Brokerage House was analyzed which indicated following findings:

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- i. The telephonic recording for the placement of the orders showed that the Respondent was placing the orders on behalf of the Fund. It is pertinent to mention that telephonic record indicated that the Respondent was singly placing the orders for the investments and divestment of shares held by the Fund. Further, the conversation also indicated his significant contribution towards the investment decisions of the Fund.
 - ii. The copy of CNIC of the Respondent was also annexed with the AOF of the Fund.
11. Keeping in view of the above it appeared that, *prima facie*, the Respondent passed on inside information regarding the half yearly financial results of SRVI, which he possessed by virtue of his position as CFO and based on which the Fund traded in the shares of SRVI just before the public dissemination of the results. Therefore, a SCN dated December 03, 2014 was issued to the Respondent as to why action should not be taken against him under Section 15E (3) of the Ordinance for passing on material non-public information pertaining to the half yearly financial results of SRVI to the Fund. The Respondent was required to submit his written reply to the SCN within ten days of the SCN and appear before the undersigned on December 29, 2014 for hearing in the matter.
12. The Authorized Representative vide letter dated December 12, 2014 requested for extension in submission of written response and date of hearing, which was acceded to.
13. The Authorized Representative submitted written response vide letter dated January 01, 2014. The relevant portions of the written response are summarized as below:
 - i. *The Respondent falls under the category of Insider as defined in Section 15C(1)-a of the Securities and Exchange Ordinance, 1969 ("SEO), which provides that insider shall include, sponsors, executive officer and directors of an issuer...*



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- ii. *SRVI is highly successful company with a proven track record of success with significant profits and dividend declaration on an interim/ annual basis. The results of the company can be easily predicted based on the past records alone. There is no significant variation in gross profit in comparison to the latest published quarterly unaudited financial statements for the quarter ended March 2014...*
- iii. *The results of SRVI including the EPS of the company happened to be inline with the market expectation as the directors' report attached to the published accounts for the period ended March 2014 clearly and unambiguously gave an indication about the sales growth in the period ended June 2014. All the information that could effect the market price of the shares of SRVI was already in public knowledge and accessible to any interested person intending to review the same...*
- iv. *The EPS of Rs. 39.57 for the half year ending June 2014 was not due to any significant unusual change in the usual profits of which could be construed as price sensitive/ inside information in terms of Section 15 D of the SEO, 1969 read with notification No. 1431(1)/2012 dated December 05, 2012 to be reported to the Stock Exchanges and the Commission...*
- v. *It is pertinent to mention that SRVI's second quarter results are markedly positive in recent years due to their coincident with the twin Eids in Islamic calendar which boosts the consumer spending resulting in increased sales...*
- vi. *As regard to the share price of SRVI during the period from August 11, 2014 to August 28, 2014, it must be appreciated that this is a normal phenomena in the stock market that shares of the listed companies start active trading after the closure of quarterly, half yearly and annual accounts...*
- vii. *The stock brokers, investment advisors, financial analysts and media reports had already projected improved performance of the company, therefore, SRVI's financial results of June 30, 2014 cannot be considered as "inside information"...*
- viii. *Further, the decision of announcement of cash dividend of 100% can only be taken by the directors, any information in this regard simply did not exist before the decision of the*



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directors of SRVI during their meeting on August 28, 2014. Therefore, the Respondent by no means had access to this information before the day of BOD meeting and thus could not pass it on to the Funds...

- ix. The notice mistakenly assumes that the Respondent disclosed the information relating to the Fund. The Notice assumes the Respondent placed the orders with broker on behalf of the Fund, he must have been involved in investment decision making of the Fund as well. IC of the Fund is authorized and responsible to make investment decisions on the behalf of the Fund. Therefore, it is noted that being an insider is not a crime and being in possession of inside information is also not a violation of Section 15 A of the SEO, 1969. It is submitted that the Respondent was simply executing the decisions of the IC in ministerial capacity and didn't disclose any information to the Fund or its IC pertaining to the upcoming financial results of the SRVI or Dividend announcement which didn't exist...
- x. No evidence whatsoever is provided of any disclosure of inside information by the Respondent to the Fund or its IC. No correspondence or other proof of communication in respect of so called inside information exchanged between the Respondent and the Fund or its IC as referred in the notice. It has been held by the Appellate Bench of the Commission in its Rulings that in absence of proof of transmission of information, the offence of passing inside information cannot be established...
- xi. Further, regarding the difference in the resolution provided by the Respondent and the Brokerage House, it is clarified that the Fund these are two different resolutions passed subject to different matters. One pertains to the Constitution of the IC and other for specifying the broker the personnel authorized to place orders with the broker...
- xii. The Respondent is a professional of outstanding repute who has always endeavored to comply with the applicable legal requirement at personal as well as company level. He has never traded in the shares of SRVI nor had derived any personal gain by indulging in trading in the shares of SRVI.

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14. In order to conclude the proceedings, the Respondent was directed to appear before the undersigned on January 21, 2015.
15. On the date of hearing the Authorized Representative and the Respondent appeared before the undersigned. The Respondent and the Authorized Representative reiterated the assertions made in the written response. Further, additional points submitted by them during the course of the hearing are summarized below:
- i. *SRVI is maintaining a huge fund with size of Rs. 1.2 Billion out of which approximately 28% is dedicated to the equity investments. Investment in the equities is only done as long term investment.*
 - ii. *The meeting of the IC was held on June 28, 2014 at the Registered office of SRVI. In this regard the copy of the minutes of the meeting was also provided during the hearing.*
 - iii. *The IC accorded approval to invest surplus funds amounting Rs. 300 Million in Fixed Income SMAs equally through three Asset Management Companies i.e., NAFA, Faysal Bank Limited and United Bank Limited, and a maximum of Rs. 40 Million be invested in the securities of Rs. 40 Million be invested in the shares of SRVI.*
 - iv. *The Investment as well as trading in the shares of SRVI will be made as and when deemed beneficial from time to time, however aggregate investment in SRVI shall not exceed the limit of 5% of the total paid-up share capital of SRVI.*
 - v. *Theoretically, there are as many as six persons who can place orders on behalf of the Fund to the broker. However, to avoid any kind of inconvenience, practically the Respondent places the order to the Broker. The Respondent is responsible to liaise with the broker.*
 - vi. *The IC gives a blanket approval during the meeting for Investment in the particular scrip, however, the timings and other specifications are communicated by the Respondent in consultation with the IC. However, this consultation is executed informally/ verbally and no record of the same has ever been maintained.*

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- vii. *SRVI has implemented Oracle system and usually, the financial results are available with the Respondent after ten days of the close of the financial period. So practically, the draft of the half yearly financial results of SRVI for the period ending June 2014 were available with the Respondent by July 10, 2014.*
- viii. *Had the Respondent have malefide intention to disclose the inside information pertaining to the financial results of SRVI to the Fund, he would have done that far earlier when the share price was moving around Rs. 510.*
- ix. *The Fund has never indulged in day trading and has held the positions as strategic investments.*
- x. *The Respondent has never obtained any personal benefit from this transaction.*
- xi. *The Respondent prayed that keeping in view the outstanding professional repute of the Respondent and his past track of compliance to the Rules and Regulations, the issued SCN be withdrawn.*
16. Subsequently, the Commission directed the Respondent to provide the details of the Authorized signatory for the Fund in relation to the Banks and copy of audited financial statements of the Fund.
17. The written response of the Authorized Representative of the Respondent dated January 30, 2015 was received, relevant portion of the response is given below:
- i. The Investment details of the Fund show that total Investment of the Fund is approximately Rs. 1,127.96 million out of which Investment worth Rs. 369.983 million is in the scrip of SRVI as of August 31, 2014.
- ii. Certified True Copy passed by the Board of Trustees of the Fund dated January 23, 2015 vide which the name of the Respondent was omitted from the list of the authorized persons to place the orders in relation to buying and selling of shares on behalf of the Fund.



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- iii. Copy of Minutes Board of Trustee held on January 23, 2015.
18. Subsequently, the authorized representative of the Respondent vide letter dated February 09, 2015 provided the Audited Financial Statements of the Fund for the period ending December 31, 2012 and December 31, 2013 and copy of the complete Bank Account Opening Form of the Fund.
19. The review of the Bank Account Opening Form of the Fund indicated following information:
- i. The name of the Respondent is given in the list of authorized persons to operate the bank account of the Fund.
 - ii. The Respondent has also been designated as the contact person of the Fund. The specimen signature card of the Respondent is also attached with the Bank Account Opening Form.
 - iii. The copy of the Board Resolution of the Fund passed by the Trustees attached with the Bank Account Opening Form narrates that the Bank of the Fund will honor whether the said account be in credit or not, all cheques, Bill of exchange, Drafts, Promissory Notes or otherwise drawn, accepted or made on the behalf of the Trust which will be jointly signed by any two of the list which includes all the Trustees and the Respondent.
20. I have thoroughly analyzed and examined the facts, evidence and documents on record, in addition to the written replies to the SCN and assertions made by the Respondent and his Representative during the hearing and my findings on the issues are as follows:
- i. On review of the arguments made both in written and verbal form, it is noted that the Respondent was insider of SRVI. The Respondent falls under the definition of Insider as defined under section 15C(1a) of the Ordinance as the Respondent was CFO of SRVI at the time of purchase of aforementioned shares by the Fund.



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- ii. The Authorized Representative in its written reply and during the course of hearing contended that the financial results of the Company are predictable as it was mentioned in the Directors' Report of 2014 that the financial performance of the company is expected to improve in the coming quarter. In support of the arguments, the Authorized Representative provided copies of various Research Reports which were published in the previous quarter predicting the higher share price of the scrip. The review of Research Reports provided by the Authorized Representative showed that the analysts' expectation regarding final results of the Company was in line with the actual results. However, there is difference between the "anticipated information" and the "information-in-hand" and the probability of acting on the basis of certain information-in-hand is much higher than on the anticipated information, owing to fewer level risks for investment. The Respondent has admitted during the course of hearing that he was in possession of material information relating to financial results of the Company far prior than the purchase of the said shares by the Fund.
- iii. During the hearing and in its written reply the Authorized Representative acknowledged that the Respondent was in possession of financial results of the SRVI for the half year ended June 2014 in his capacity as CFO of SRVI before the purchase of shares by the Fund.
- iv. The Respondent and the Authorized Representative in its written reply and during the course of hearing stated that the members of IC independently took the decision to purchase the shares of the Companies. In this context copy of the minutes of the IC dated June 28, 2014 was provided during which the decision for purchase of shares of SRVI was taken. The minutes clearly suggest the investment decision of IC was to invest in the scrip of SRVI up to a maximum of Rs. 40 Million. Further, it narrated that investment and trading in the scrip of SRVI will be made as and when deemed beneficial from time to time. Further, the Respondent during the course of hearing submitted that a blanket



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approval for investment is given by the IC, and the decision for trading is done from time to time in consultation of IC. It is important to note that the IC has not decided any specific date or period for making investment. This implied that the Respondent being the relevant authority to the subject had vital role to play in the investment/trading decisions and timings of the investment of the Fund.

- v. The banking information of the Fund shows that the Respondent is one of the authorized signatories of the Fund who are authorized to deal in all the transactions relating to the payments and receipts of the Fund. This shows that the Respondent has been significantly involved in the banking deals of the Fund and was authorized to transact on the behalf of the Fund.
- vi. The Respondent commented that the decision of announcement of cash dividend of 100% can only be taken by the directors and the Respondent had no information in this regard before the meeting of BOD on August 28, 2014. However, the argument is not acceptable as it is the CFO who submits a complete working on extent of free distributable funds to be paid as dividends to the BOD and is aware of the probable declaration of Dividend to the shareholders.
- vii. The Respondent has agreed that he is an insider to the SRVI and possessed inside information pertaining to the financial results of the Company by virtue of his position as CFO. Further, the financial results of the company are very critical and price sensitive information and disclosure of the same casts a significant impact on the share price and volume of the scrip. Having in possession of the said information and acting on the basis of that inside information constitutes the whole pattern of Insider Trading. As referred in written response to the Authorized Representative that it is a natural phenomena that market activity in any scrip is boosted in the days near the close of the financial period. Therefore, the materiality of this information is indisputably clear and it is the anticipation of improvement in earnings of the company which caused price fluctuation



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in the scrip. Therefore, an insider having accurate knowledge about fore-coming financial results of the company is no way at par with the general investors who are trading on the basis of market reports.

viii. It is pertinent to mention that during the period from August 11, 2014 till August 18, 2014, the Fund was the highest net buyer in the scrip purchasing 53,400 shares at an average price of Rs. 536.477. The said purchase constitutes approximately 44% of the total market volume. Such aggressive purchase by the Fund generated unusually high volume in the scrip just before the announcement of the results which in turn would trigger investors' sentiment.

21. On review of the arguments, made both in written and verbal form, it is noted that the Respondent admitted a number of points which were raised in the SCN according to which by definition, the Respondent was insider being the CFO of SRVI and in direct contact with the members of IC of the Funds at the same time. In this connection as stated in the SCN the Respondent falls under the definition of Insider as defined under Section 15C (1a) of the Ordinance at the time of trading of aforementioned shares by the Funds.
22. From the facts of the case mentioned above, it is established that the Respondent being the CFO of the SRVI, at the time of trading of shares by the Funds, was an insider and had prior information regarding half yearly financial results of SRVI. Simultaneously, the Respondent was in liaison with the members of the IC for consultation of favorable dynamics of investment/trading in the shares of SRVI under the approval umbrella. Furthermore, the Respondent was responsible for order placement and post execution activities on the behalf of the Fund. Therefore, on the basis preponderance of evidence and material on record against the Respondent, it is established that the Respondent has disclosed the material/ non –public information pertaining to the half yearly financial results of SRVI to the Fund, which traded on the basis of the same. The IC in its meeting held on June 28, 2014 approved the investment in the scrip of SRVI up to a maximum of Rs. 40 Million as and when deemed beneficial from time to

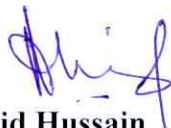


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time. It is important to note that the IC has not decided any specific date or period for making investment. During the hearing the Respondent was asked to provide any evidence reflecting he was given the instructions from the IC for making investment during the Period. He explained that no such document exists and he discussed verbally with the IC before making investment. This clearly reflects that the Respondent had played vital role in the investment/trading decisions and timings of the investment of the Fund.

23. Moreover, it is noted with deep concern that the Respondent being CFO of the SRVI and the focal person for investment / trading by the Fund has been unable to ensure the transparency. It is his duty to exercise reasonable care skill and diligence in conducting the affairs of the Respondent. The manner in which the shares in question were purchased by the Fund clearly defeats the main purpose i.e. transparency.
24. In light of the above, in exercise of powers under Section 15E (3) of the Ordinance, I hereby impose on the Respondent a fine of Rs. 500,000/- (Rupees Five Hundred Thousand Only) for disclosing material inside information relating to half yearly financial results of SRVI which was not required to possess such inside information for any reason. I further direct the Respondent to ensure such measures and controls in future which do not raise such conflict of interest.
25. The matter is disposed of in the above manner and the Respondent is directed to deposit the penalty 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.


Abid Hussain
Director / HOD (MSSID)

Announced on 19.2.2015
Islamabad.

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