



Through Courier

No. 1358.

Before The Director/HOD (MSSID)
In the matter of Show Cause Notice issued to
Next Capital Limited
Under Section 22 of the Securities and Exchange Ordinance

Date of Hearing:

February 18, 2015

Present at the Hearings:

Representing Next Capital Limited

i) *Mr. Khuram Ali*

Head of compliance and Internal Audit

Assisting the Director/ HOD (MSSID)

i) *Mr. Mirza Shoaib Baig*

Deputy Director, MSSID

ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. 1(30) CCL/MSW/SMD/2013 dated February 4, 2015 ("SCN") issued by Securities and Exchange Commission of Pakistan ("the Commission") under Section 22 of the Securities and Exchange Ordinance, 1969 ("the Ordinance") to Next Capital Limited, ("the Respondent").

2. The brief facts of the case are that during the ongoing surveillance of Karachi Automated Trading System (KATS) data, the Respondent was requested vide Commission's letter dated January 23, 2015 to provide the copy of Standard Account Opening Form ("SAOF") of the client bearing the client code "30218". The Respondent vide letter dated January 30, 2015 provided the requisite document.

3. During the examination of SAOF, following observations were made:

- The SAOF does not bear date of account opening.
- Particulars of nominee were not filled.
- The SAOF was not witnessed by two individuals along with CNIC numbers and signatures.
- Authorization letter was signed by the client and the Head of Operations (HOO) of the Respondent without name and details of person authorized to operate the account. However, the Respondent vide letter dated January 30, 2015 stated that





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the client has not authorized anyone to operate his account.

- The KYC/ CDD details regarding employer's name and address and job title of the client was blank.
- Copy of CNIC of the client was not attested as required under KSE Regulations.
- Sections of SAOF for Corporate Account Holders were blank and not applicable for individual client but yet signed both by Client and the HOO.

4. The SCN was issued to the Respondent to explain through written reply along with documentary proof within 07 days from the date of the SCN, as to why action may not be taken in pursuance of Rule 8 of the Brokers and Agents Registration Rules, 2001 ("Brokers Rules") and Section 22 of the Ordinance. The Respondent was also required to appear in person or through an authorized representative, at Commission's Office at 5th Floor, State Life Building # 2, Wallace Road, Karachi on Tuesday, February 16, 2015 at 11.00 a.m. However, due to an unavoidable event the hearing was rescheduled on February 18, 2015.

5. The Commission received reply of the SCN from the Respondent dated February 12, 2015. The important contentions raised in the response is reproduced hereunder:

"In reply to your notice no 1(30)CCL/MSW/SMD/2013/1214 dated February 4,2015,it is hereby submitted that we have been a compliant brokerage house since our incorporation which is evident from our system audit reports and CDC audit reports. Besides we get our accounts audited/reviewed by a highly prestigious firm of chartered accountants, KPMG Taseer Hadi Khalid & Co. The form in question is one of the few forms overlooked by us since at the time of account opening we were in the process of setting up internal audit department required to be maintained under Code of Corporate Governance. Also, we are one of the few brokerage houses where not a single complaint by an investor has ever been lodged.

Now in addition to above external audits, the internal audit department is set up which checks and corrects the discrepancies in real time including but not limited to witnesses on account opening ,attestation of CNICs and details of nominee.

With regard to your objections on authorization letter being blank and sections for corporate account holders signed by the client and Head of operations, it is humbly submitted that it is our practice to get the form signed on each and every page and then cancel the irrelevant sections. However, if you feel that such practice is not appropriate we shall no follow it in the future. Further, taking advantage of the presence of account holder in Karachi we have got his CNIC





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attested and the witnesses in the account opening form which was re-signed by the account holder. We are attaching copy of the amended account opening form for your perusal."

6. Hearing in the matter was conducted on February 18, 2015. The hearing was attended by Mr. Khurram Ali, Head of Compliance and Internal Audit as authorized representative of the Respondent who submitted the same response as was given in writing. He informed that he has been recently appointed and he has started reviewing all the SAOFs to ensure compliance of law in letter and spirit. He admitted that the observations made with regards to the SAOF in question are valid and have been noted. Further, the missing data has been filled and NIC was got attested soon after the receipt of SCN. During the hearing he raised certain queries such as to whether every page of SAOF is required to be signed? He was advised that only applicable sections/pages should be signed. He further asked that can we get every page signed and then cancel the non-applicable pages. He was explained that the sections which are not applicable should be crossed with remarks "not applicable" and the same should not be signed. The practice of the Respondent may lead to suspicions such as why this page has been cancelled when it is signed and as to whether the person who has cancelled the signed page was authorized to do so etc. Further, the authorization letter should be dealt carefully as if it signed without completing the particulars it is prone to be misused which may lead legal complications for the Respondent.

7. I have thoroughly perused facts of the case and submissions by the Respondent during the hearing. Additionally, I have perused the record and written reply filed by the Respondent. It is responsibility of the Respondent to maintain complete and accurate information of its clients at all times. The reason extended by the Respondent that SAOF of client bearing client code 30218 was one of the forms overlooked by the respondent as at the time of account opening they were in the process of setting up internal audit department is not tenable. It is responsibility of the Respondent to ensure that each SAOF is duly filled and all applicable information is up to date and accurate.

8. It has been observed that basic requirement of SAOF i.e. the date of opening of account, was found missing. Similarly, particulars of nominee were not filled and the SAOF was not witnessed by two individuals along with CNIC numbers and signatures. One particularly disturbing observation has been that the Authorization letter annexed with SAOF was signed by the client and HOO of the





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Respondent without the name and details of person authorized to operate the account. Furthermore, the KYC/ CDD details regarding employer's name and address and job title of the client was blank form was blank but signed by the client indicating absence of any KYC/CDD process followed by the Respondent at the time of opening of the account. Similarly, a straight forward requirement of KSE Regulations to have an attested copy of CNIC of the client was not complied with and sections of SAOF for corporate account holders which are not applicable for individual client but yet were signed both by the Client and the HOO.

9. The practices adopted by the Respondent in the instant matter create doubts regarding the completion of record of the client of the Respondent. It is pertinent to mention here that in order to protect the interest of the investors and to strengthen the capital markets, the law imposes obligation on the market intermediaries to adhere to and comply with all the rules and regulations framed under the Ordinance. It is important to highlight that money laundering and financing of criminal activities is a very serious offense and the brokerage community must always remain vigilant that their good offices are not used for any such activity. This is important for the growth and development of individual brokerage houses and the securities industry in Pakistan.

10. It is a basic tenet of any business to know its customers to protect themselves from being used by unscrupulous and criminal elements. In this regard, brokers have to take all reasonable care to establish the true identity of customers. In this regard SAOF is the key document the identity of client and governs the relationship of client and the broker. It is therefore essential that SAOF must be duly filled with utmost accuracy and no applicable section must be incomplete. To be prudent, brokers should also obtain any other document further than the prescribed documents from the account opener if they believe it will help in establishing the true identity of the customer and the real controlling person behind the account.

11. The key point is that brokers must not open anonymous or fictitious accounts. It is important to recognize if a customer is acting on behalf of another person. The identity of the person who is becoming the client of the broker should be ascertained and relevant documents of that person must be obtained.





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12. From the above, it is established that the Respondent failed to exercise due care, skill and diligence in the conduct of its business. It is disappointing to note that the Respondent allowed a client to open account and trade in the market whose complete particulars were not obtained. The Respondent has failed to abide by applicable rules and regulations by violating the Clause A (2) of Code of Conduct set forth under the Third Schedule of the Broker Rules which in turn is a violation of Rule 12 read with Rule 8 of the Brokers Rules.

13. The violation of the Rules and Regulations is a serious matter which entitles the Commission to even suspend the Respondent's registration but I have opted not to exercise this power at present. However, in exercise of the powers under section 22 of the Ordinance, I hereby impose a penalty of 100,000/- (Rupees One Hundred Thousand Only) on the Respondent. I direct the Respondent to ensure full compliance of all rules, regulations and directives of the Commission in the future for avoiding any punitive action under the law.

14. 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 a copy of the deposit challan to the Commission.

15. Moreover, the Respondent is also directed to complete SAOFs of all existing Account Holders within 3 months from the date of issue of this Order and report the same to the Commission failing which necessary proceedings shall be initiated against the Respondent.


Abid Hussain
Director/HOD (MSSID)



**Announced on February 24, 2015,
Islamabad.**