



Securities and Exchange Commission of Pakistan
Securities Market Division

Through Courier

Before The Director / HOD (MSRD)

In the matter of Show Cause Notice issued to Invest Capital Markets Limited
under Section 22 of the Securities and Exchange Ordinance, 1969

Date of Hearing:

February 9, 2015

Present at the Hearing:

Representing Invest Capital Markets Limited

- (i) Mr. Khurshid Malik
- (ii) Mr. Tariq Mahmood
- (iii) Mr. Ahmed Usman

Chief Executive Officer
Director
Chief Financial Officer

Representing Karachi Stock Exchange Limited

- (i) Mr. Shafqat Ali

Chief Regulatory Officer

Assisting the Director/HOD (MSRD)

- (i) Mr. Muhammad Tanveer Alam
- (ii) Mr. Adnan Ahmed
- (iii) Ms. Najia Ubaid

Joint Director
Deputy Director
Deputy Director

ORDER

1. This Order shall dispose of the proceedings initiated through Show Cause Notice bearing No. 1(53) SMD/MSRD/C&IW/2015 dated January 23, 2015 ("SCN") served to Invest Capital Markets Limited ("Respondent"), Trading Right Entitlement Certificate Holder/Broker of the Karachi Stock Exchange Limited ("KSE") by the Securities and Exchange Commission of Pakistan ("Commission") under Section 22 of the Securities and Exchange Ordinance, 1969 ("Ordinance") read with Rule 8 of the Brokers and Agents Registration Rules, 2001 ("Brokers Rules").

2. Brief facts of the case are that the Respondent in accordance with the requirements as laid down in the KSE Rule Book ("Rule Book") and subsequent notifications by KSE was required to submit its Net Capital Balance ("NCB") Certificate as of June 30, 2014 by October 31, 2014. The Respondent failed to provide the same and upon enquiry from the Commission made vide letter dated November 28, 2014, submitted its NCB Certificate as of October 20, 2014 vide letter dated December 2, 2014.





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3. Since, the Respondent did not submit its NCB Certificate of June 30, 2014, the Commission vide letter dated December 5, 2014 required it to provide the NCB Certificate along with working and details in respect of each item on NCB of both the dates i.e. June 30 and October 31, 2014 by December 9, 2014. Upon request of the Respondent for extension in the date of submission of the information, the Respondent was asked to provide the requisite information by December 19, 2014, which was accordingly provided by the Respondent.

4. NCB Certificate as of June 30, 2014 provided by the Respondent depicted negative balance of Rs. 94.967 million along with an audit observation pertaining to investments of Rs. 55.48 million on which right of the Respondent was established but were not held by the Respondent in its house account. Scrutiny of NCB as of October 20, 2014 depicted a balance of Rs. 22.589 million along with the audit observation regarding investments of Rs. 52.741 million. Information provided by the Respondent needed further clarification and the Respondent was accordingly required to submit its response along with supporting evidence by January 16, 2015. However, nothing in the context was received till the date of SCN.

5. Analysis of the NCB Certificates revealed that the Respondent failed to maintain minimum NCB as required in terms of Rule 3 of the Securities and Exchange Rules, 1971 ("SEC Rules") and also failed to provide the requisite information, prima facie, in violation of Clause D(2) of the Code of Conduct contained in Third Schedule of the Brokers Rules. In light of the above, the Commission served a SCN to the Respondent under Section 22 of the Ordinance and Rule 8 of the Brokers Rules. Hearing in the matter of aforesaid SCN was scheduled for February 9, 2015 at the Commission's Head Office in Islamabad. The Chief Regulatory Officer of the KSE was also advised to attend the hearing in the said matter.

6. The Respondent submitted written response to the SCN vide letter dated February 3, 2015 which also included soft copy of the information as was required by the Commission. The arguments put forward by the Respondent in its written response are reproduced below:

"In respect of Investment amounting to PKR 51.52 million which is being held in the House Account of Invest Capital Investment Bank Limited we wish to state that the House Account of Invest Capital Investment Bank Limited has been maintained in accordance with the requirements of the Securities and Exchange Commission of Pakistan."

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since the transfer of brokerage business from ICIBL to ICML and the shares held in the House Account are not yet being transferred due to various reasons out of which major is pledge of the shares against the borrowing of the client. In order to provide you the evidence to ascertain the ownership we are enclosing herewith a copy of confirmation letter from ICIBL for review and record. Client wise reconciliation of shares held in the House Account of ICML and ICIBL is attached herewith.

In respect of reduction in current liabilities for we are attaching herewith movement schedule as required. The source of payment of the liabilities is amount received against Money Market & Forex Brokerage and funds receive from a shareholder. Soft copies of the ledgers of the following clients are attached herewith:

Code	Client Name
LA306	Shahid Wasim Ahmad
KC219	Active Apparels International (Pot). Ltd
I1267	Unified Ventures (Pot). Ltd
KO265	Shams-ul-Hasan
KC031	Employees Old Age Benefit Institution
LA786	Muhammad Rafique
P0166	Natover International
I1265	Lutfullah Alvi

7. Mr. Khurshid Malik, Chief Executive Officer; Mr. Tariq Mahmood, Director and Mr. Ahmed Usman, Chief Financial Officer ("Representatives") attended the hearing on February 9, 2015. Mr. Shafqat Ali, Chief Regulatory Officer ("CRO KSE") also participated in the proceedings of the hearing. The arguments put forth by the Representatives during the course of hearing are summarized below:

- a) The Representatives while explaining the delay in submission of NCB Certificate of June 30, 2014 informed that the Respondent was facing number of issues including segregation of clients' assets. The Representatives articulated that with the cooperation of KSE, the Respondent can now claim to be compliant with regard to segregation of clients' assets. The Representatives communicated that KSE withheld Rs. 40 million of the Respondent on account of settling the outstanding exposure, which was released on October 20, 2014 and for the same date the Respondent submitted its NCB Certificate. The Representatives admitted that all the above cannot be considered as an excuse for late submission of NCB Certificate of June 30, 2014 but they are narrating the situation that the Respondent was facing during the period. The Representative further added that the Respondent used to provide weekly status of segregation of clients' assets to





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- the KSE. CRO KSE agreed with the stance taken by the Representatives and communicated that KSE also initiated enforcement action against the Respondent for delay in submission of NCB Certificate and imposed penalty, which was accordingly paid by the Respondent. CRO KSE stated that the copies of enforcement actions shall be provided to the Commission.
- b) The Representatives with specific reference to 965,000 shares of Pak Oman Advantage Fund ("POAF"); 3,672,000 shares of NIB Bank Limited ("NIB") and 1,250,000 shares of PACE Pakistan Limited ("PACE") held by Invest Capital Investment Bank Limited ("ICIBL"), communicated that since POAF shares were pledged, therefore, could not be transferred earlier, however, as of date only 50,000 shares of POAF are left and all the remaining shares are transferred in the name of the Respondent. The Representatives provided copy of CDC statement of the sub account of ICIBL depicting movement out of the POAF shares. Explaining the transfer of 5.8 million shares of NIB and 1.25 million shares of PACE, the Representatives informed that pledge release of the referred shares is expected in June 2015 and the same shall then be transferred in the name of the Respondent. Upon query the Representatives communicated that said shares are pledged against borrowing by one of the sponsors of the Respondent and agreed to provide copies of the correspondence in this context.
- c) The Representatives, with regard to client wise reconciliation of the number of shares appearing in the Respondent's house account, communicated that it has provided the reconciliation in the CD attached with the letter dated February 3, 2015. The Representatives stated that the said shares are available with the Respondent as property of clients, as and when it receives the claims the same shall be immediately transferred to their accounts. The Representatives further added that at a time this number was round 420 million shares, however, with the cooperation of KSE and the Commission it has been able to reduce it to Rs. 15 million. In respect of client wise break up of shares appearing in house account of the Respondent with the details stating "Miscellaneous", "Error Omission" "Application" & "Unknown" the Representatives explained that they have tried their level best to identify the beneficial owners of said shares and in cases of non-identification, this status is appearing. The Representatives asserted that a majority of the shares appearing are identified and resolved.





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- d) With specific reference to 2.4 million shares of Dandot Cement Company Limited ("DNCC") appearing in the name of one of its clients' the Representatives communicated that because of restriction on opening of sub-accounts by KSE, the same could not be transferred.
- e) Upon query regarding inclusion of Respondents' investment in NCB being in the account of the Respondent for more than a year and long term in nature, the Representatives communicated that the same has been included as per its understanding. They further informed that KSE holds property papers of the Respondent for the worst scenario, furthermore, the Respondent settles 50% of the outstanding exposure on the same day as per the instructions of KSE. The CRO KSE avowed the stance taken by the Representatives during the course of hearing, however, CRO KSE added that the Respondent kept on reporting that it has sufficient NCB to National Clearing Company of Pakistan Limited ("NCCPL") in the National Clearing House System ("NCHS") on weekly basis against its factual position. CRO KSE further specified that if the Respondent mentioned the true factual position, it would not be able to trade in the stock market during the period.
- f) Upon enquiry regarding shares belonging to the Respondent with the sub account maintained with Al-Hooqani Securities and incorporated in the NCB calculation, the Representatives informed that the Respondent shall transfer those shares to its house account soon.
- g) The Representative while explaining the source of funds used to reduce liabilities between the period June 30, 2014 and October 20, 2014 communicated that it has received amount from its major shareholder as long term financing and agreed to provide evidence in this context. The Representatives further stated that it will improve its liquidity position and the same can be evident from the NCB Certificate and agreed to provide updated position by March 15, 2015.
8. I have heard the arguments presented by the Representatives at length during the course of hearing. Additionally, I have perused the available record and the written response filed by the Respondent. Accordingly, my findings on the arguments and assertions made by the Respondent to the issues raised in the SCN are as follows:

- a) The Representatives admitted that there was delay in submission of NCB Certificate as of June 30, 2014 by the Respondent. The Representatives further

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- communicated that the primary reason was that the Respondent was arranging funds and for that matter upon enquiry from the Commission regarding NCB of June 30, 2014 the Respondent submitted NCB Certificate as of October 20, 2014 which though contained an observation note regarding investments but depicted positive balance.
- b) The Representatives provided evidence with regard to transfer of 965,000 shares of POAF in the name of the Respondent and communicated that remaining shares of NIB and PACE shall be transferred in the name of the Respondent by June 2015.
- c) The Representatives while explaining the clients' shares available in the Respondent's house account, stated that the Respondent has complete details as to whom those shares belong, but since no one has contacted it for ownership/transfer of those shares to their account, the Respondent has no other choice to let those stay in its account. With reference to transfer of DNCC shares in the name of one of the Respondent's client, the CRO KSE communicated that the Respondent shall be facilitated in opening the CDC Sub Account of the Respondent's client. The Commission received copy of a letter dated February 11, 2015 issued by KSE in the context, requesting Central Depository Company of Pakistan Limited to allow the Respondent to open CDC sub account subject to completion of the required formalities.
- d) The Representatives with specific reference to inclusion of investments older than a year in the NCB calculation stated that the Respondent is making all possible efforts to improve its financial health and the same shall be evident from the details that shall be submitted by the Respondent. The Representatives assured that the Respondent shall not seek any further extension in the context and provide the requisite details substantiating financial strength by March 15, 2015.
- e) To corroborate their stance of reduction in liabilities between the period of June 30, 2014 and October 20, 2014 the Representatives provided copies of receipts. The Representatives also agreed that the Respondent shall keep on providing weekly report with regard to segregation of clients' funds to KSE till March 15, 2015.



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9. After a detailed and thorough perusal of the facts, evidence/information available on record, contentions and averments made by the Representatives during the course of the hearing, it is evident that the Respondent failed to maintain NCB in accordance with the regulatory framework.

10. The Respondent being registered with the Commission as a broker is expected to exercise due skill, care and diligence in the conduct of its business and ensure full compliance of the laws and relevant rules and regulations. Moreover, the Respondent being aware of the fact that its NCB is negative kept on reporting in the NCHS that it has maintained minimum NCB and/or capital adequacy requirements.

11. The Commission has very serious reservations on such conduct of the Respondent that can be termed as misrepresentation and deception and are performed only for the continuity of its business. The Respondent is required to demonstrate fairness in the conduct of its business and is not expected to make any false/misleading statement and to engage in such act that compromise the market transparency; clients' interest; systemic risk to the stock market and increase the default risk at the cost of Respondent's own interest.

12. It is the responsibility of every market participant including the Respondent to maintain the integrity of capital market with the prime objective of the protection of clients' interest. The Respondent in its written response and the Representatives during the course of hearing assured compliance with the regulatory requirements and asserted that it shall submit revised NCB depicting its improved financial health to the Commission by March 2015.

13. Violation of rules and regulation is a serious matter of concern, however, considering the efforts made by the Respondent to improve its financial position; assurance of compliance with the regulatory requirements; custody of Respondent's property papers by KSE; settlement of obligations on T+1 basis in exercise of the powers conferred upon under Section 22 of the Ordinance, I hereby impose a penalty of Rs. 500,000/- (Rupees Five Hundred Thousand Only) on the Respondent. Moreover, the Respondent is directed to submit its NCB Certificate as of March 10, 2015 and is further directed to ensure that the above information is received in this office by March 15, 2015.





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

15. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with the law on matter subsequently investigated or otherwise brought to the knowledge of the Commission.



(Imran Inayat Butt)
Director/HOD (MSRD)

Announced on February 27, 2015
Islamabad.