



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

Before the Director (Securities Market Division)

In the matter of Show Cause Notice issued to

Maximus Securities (Pvt.) Limited

Under Rule 8 read with Rule 12 of the Brokers and Agents Registration Rules, 2001

Number and Date of Notice	No. MSW/SMD/LSE/1(5)2006/3 dated October 08, 2007
Date of Hearing	October 08, 2007
Present at the Hearing:	Mr. Adeel Arif Khan, Chief Executive Officer
Date of Order	January 17, 2008

ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. MSW/SMD/LSE/1(5)2006/3 dated October 08, 2007 (**"the SCN"**) issued to Maximus Securities (Pvt.) Limited (**"the Respondent"**), member of the Lahore Stock Exchange (Guarantee) Limited (**"LSE"**) by the Securities and Exchange Commission of Pakistan (**"the Commission"**) under Rule 8 of the Brokers and Agents Registration Rules, 2001 (**"the Brokers Rules"**) for violation of Rule 12 of the Brokers Rules and clause A5 of the Code of Conduct contained in the Third Schedule of the Brokers Rules.
2. The brief facts of the case are that the Respondent is a member of LSE and is registered with the Commission under the Brokers Rules. An enquiry was initiated by the Commission in exercise of its powers under Section 21 of the Securities and Exchange Ordinance, 1969 (**"the Ordinance"**) and Ford Rhodes Sidat Hyder & Co. (**"the Enquiry Officer"**) was appointed as the Enquiry Officer under the above mentioned Section for the following:
 - (a) to enquire into the dealings, business or any transaction by the Respondent during the period from April 01, 2006 to June 15, 2006 (**"the Review Period"**).
 - (b) to identify any and all the acts or omissions constituting a violation of the Ordinance and the Rules made thereunder.
 - (c) to identify violations of any other applicable laws, including but not limited to the Brokers Rules, Regulations for Short Selling under Ready Market, 2002 (**"Short Selling Regulations"**).



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General Rules and Regulations of LSE, Securities and Exchange Rules 1971 (**the 1971 Rules**) and directives issued by the Commission from time to time.

3. The findings of the Enquiry Officer revealed several instances of potential non-compliances with applicable laws and regulations. A copy of the Enquiry Officer's report was sent to the Respondent on September 07, 2007 which required the Respondent to provide explanations on the observations of the Enquiry Officer together with supporting documents.
4. After perusal of the Respondent's replies to the above mentioned letter, which did not adequately explain the position in respect of some instances, the SCN was issued to the Respondent under Rules 8 of the Brokers Rules stating that the Respondent has prima facie contravened Rule 12 of the Brokers Rules read with Clause A5 of the Code of Conduct contained in the Third Schedule to the Brokers Rules which are reproduced as under:

Rule 12- 'A broker holding a certificate of registration under these rules shall abide by the Code of Conduct specified in the Third Schedule'.

Clause A5 of the Code of Conduct- 'A broker shall abide by all the provisions of the Securities and Exchange Commission of Pakistan Act, 1997 (**the Act**) and the rules, regulations issued by the Commission and the stock exchange from time to time as may be applicable to him'.

5. On October 08, 2007, the Respondent was called upon to show cause in writing within seven days and appear before the undersigned on October 18, 2007 for a hearing, to be attended either in person and/or through an authorized representative.
6. The hearing was attended by Mr. Adeel Arif Khan, Chief Executive Officer of the Respondent, who argued the case. However, no written reply to the SCN was submitted.
7. A summary of the contentions and objections that were raised by the Respondent in its written submissions and during the hearing and findings and conclusions of the Commission on the same are as follows:

8. **Blank Sales ("Issue No. 1")**

- 8.1 In terms of Regulation 4 of the Short Selling Regulations, Blank Sales are not permissible and in terms of Regulation 5 of the Short Selling Regulations, it is provided that:

"No Member shall make a Short Sale unless:

- a) Prior contractual borrowing arrangement has been made.
- b) The sale is made at an uptick, and
- c) The trade is identified as a Short Sale at the time of placement of order"

- 8.2 The findings of the Enquiry Officer revealed 41 instances of Blank Sales during the Review Period.



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8.3 The Respondent made the following submissions on the issue:

- In its earlier written reply dated September 28, 2007, vide which the Respondent provided comments on the Enquiry Report, the Respondent accepted the execution of Blank Sales mentioned in the Enquiry Report. Subsequently the Blank Sales given in the Enquiry Report were made part of SCN as Annexure – A ("the Annexure").
- During the hearing the Respondent with regard to instances given at serial nos. 1-22 and 26-41 stated that same belonged to its client Mr. Moeen Qadir who at the time of execution of said trades stated that he had deliveries in his CDC account with a broker at Karachi Stock Exchange (Guarantee) Limited ("KSE"). However, later on the client squared up his position which did not require transfer the shares to the Respondent. However, no documentary evidence was provided by the Respondent to establish that the client had position at KSE. Whereas, with regard to instances given at serial nos. 23-25 the Respondent stated that the said trades were result of mistake as the client over sold his position in panic due to sudden market movement.

8.4 I have considered the contentions of the Respondent and the issues raised therein and the same are addressed by me below:

- The Respondent's assertion that the client Mr. Moeen Qadir had position with KSE broker can not be accepted in absence of any documentary proof. It may be noted that the Respondent is responsible for each and every trade executed through its terminals and it is its duty to ensure that each and every trade executed by it comply with the applicable rules and regulations. Therefore, the Respondent should have obtained documentary evidence from its clients that they had pre-existing interest in the shares being sold by it. Keeping in view the aforementioned and in absence of any documentary evidence the said trades will be considered as Blank Sales.
- With regard to instance given at the serial nos. 23-25 the Respondent assertion that the said trades were result of mistake does not absolve the Respondent from its obligation to comply with the Short Selling Regulations. It was the responsibility of the Respondent to put in place proper system and controls in order to ensure that trades executed through its house comply with applicable rules and regulations.

8.5 Considering the above facts and the contentions of the Respondent, it is clear that 41 Blank Sales have been made in violation of Regulation 4 of the Short Selling Regulations. In terms of Rule 8 of the Brokers Rules, sub rule (ii) where the Commission is of the opinion that a broker has inter alia failed to comply with any requirements of the Act or the Ordinance or of any rules or directions made or given thereunder, in terms of sub rule (iii) has contravened the rules and regulations of the exchange and in

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terms of sub rule (iv) has failed to follow any requirement of the Code of Conduct laid down in the Third Schedule, the Commission may in the public interest, take action under Rule 8(a) or (b) of the Brokers Rules.

8.6 In light of the above i.e. the facts the Respondent by making Blank Sales has violated the Short Selling Regulations thereby attracting sub rule (iii) of the Rule 8 of the Brokers Rule and has also failed to comply with Clause A5 of the Code of Conduct contained in the Third Schedule to the Brokers Rules, thereby, attracting sub rule (iv) of the Rule 8 of the Brokers Rule. Accordingly, a penalty of Rs. 25,000 (Rupees Twenty Five Thousand only) is hereby imposed on the Respondent under Rule 8 (b) of the Brokers Rules.

9. **Account Opening Form ("Issue No. 2")**

9.1 In terms of Commission's Directive No. SMD/SE/2(89) 2003 dated July 23, 2003 which requires all the members-brokers to maintain Account Opening Form (s) ("the AOF(s)") in conformity with the Standardized Account Opening Form ("the SAOF") prescribed by the Commission and subsequent changes made to the SAOF vide letters No. SMD/SE/2(89) 2003, dated November 19, 2003 and January 20, 2004. Subsequently this SAOF was also made part of LSE General Rules and Regulations as Chapter VIII. The said directives of the Commission require that:

- List of Transaction fee, Commission to be charged by the Broker and other CDC charges to be levied should be attached with the AOFs.
- Attested copies of clients' CNICs must be attached with the AOFs.
- Margin to be maintained by client must be mentioned on AOF.
- Each field of the AOF should be filled at the time of opening of account.

9.2 Findings of the Enquiry Officer revealed that:

- List of Transaction fee, Commission to be charged by the Respondent and other CDC charges to be levied was not attached with the AOFs.
- Un-attested copies of CNICs of the clients were attached with AOFs.
- Margins to be maintained by clients were not mentioned on AOFs.
- CNIC numbers of client were not mentioned on AOFs.

9.3 The Respondent made the following submission on this issue:

- With regard to violation regarding not attaching, with AOF, list of transaction fee, commission to be charged by the Respondent and other CDC charges to be levied, the Respondent stated that list of charges are given to the clients at the time of opening of account but the same was



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not being attached with the AOFs. After the Enquiry it has now started to attach the said list with AOFs.

- With regard to remaining violation as stated above the Respondent agreed to the same, however, it assured that it has already taken corrective actions and is now complying with the requirements of the SAOF.

9.4 I have considered the assertion of the Respondent and it is evident that the Respondent has acknowledged above-mentioned violations. However, the Respondent has assured that it has taken corrective steps and is currently complying with the abovementioned directives of the Commission and requirements of SAOF.

9.5 Considering the above facts and the contentions of the Respondent, it is established that the Respondent has failed to comply with Commission's directive and General Rules and Regulations of the LSE. In terms of Rule 8 of the Brokers Rules, more particularly sub rule (iii) and sub rule (v) therefore, where the Commission is of the opinion that a broker has inter alia failed to comply with any requirements of the any directions of the Commission and/or has contravened the rules and regulations of the Exchange and/or has failed to follow any requirement of the Code of Conduct laid down in the Third Schedule, it may in the public interest, take action under Rule 8(a) or (b) of the Brokers Rules.

9.6 In light of the above i.e. the fact the Respondent failed to comply with Commission's directives thereby attracting sub rule (v) of the Rule 8 of the Brokers Rule. However, based on the Respondents statement that it has already taken corrective actions and assured the Commission that such violations will not occur in future I am inclined, on this occasion, to take a lenient view in the matter and will not take any punitive action under Rule 8 of the Brokers Rules. As such, I believe a 'caution' in this instance to the Respondent would suffice and 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. **Order Register ("Issue No. 3")**

10.1 In terms of Rule 4(1) of the 1971 Rules it is provided that :

"All orders to buy or sell securities which a member may receive shall be entered, in the chronological order, in a register to be maintained by him in a form which shows the name and address of the person who placed the order, the name and number of the securities to be bought or sold, the nature of transaction and the limitation, if any, as to the price of the securities or the period for which the order is to be valid."

10.2 The findings of the Enquiry Officer revealed that the order register as mentioned above was not maintained by the Respondent during the Review Period.



10.3 The Respondent made the following submission on the aforementioned issue:

- The Respondent during the hearing stated that it has attached a printer with each terminal which prints the detail of all the orders placed by it into the system; however, it acknowledged that it is not maintaining a separate order register. The Respondent during the hearing assured that it will now maintain the order register as required.

10.4 I have considered the contentions of the Respondent and I am of the view that printout of electronic ledgers or the Daily Activity Log as mentioned by the Respondent is not a substitute for the Order Register as required under the Rule 4(1) of the 1971 Rules. The aforementioned Logs only record those orders that are placed by the Respondent into LOTS and not all the orders which were received from the clients and not entered into LOTS. Further, the said Log only records the time of placement of orders into the system and not the time of receipt of orders.

10.5 The Commission is also cognizant of the practical difficulties associated with the maintenance of such an Order Register manually. However, it is noted with disappointment that the brokerage house and LSE were unable to keep pace with evolution in technology and significant increase in trading activities whereby a system should have been developed to enable simultaneous recording of orders received from clients and their incorporation in a database to generate the Order Register as required under the Rule 4(1) of the 1971 Rules.

10.6 Considering the above mentioned fact I am inclined, on this occasion, to take a lenient view in the matter and will not take any punitive action under Rule 8 of the Brokers Rules. As such, I believe that a caution in this instance to the Respondent would suffice and I would further direct the Respondent to ensure that full compliance be made of all the laws, regulations and directives of the Commission in future for avoiding any punitive action under the law.

11. **Trade confirmations ("Issue No. 4")**

11.1 AND WHEREAS, Rule 4(4) of the 1971 Rules states that;

"A member executing an order of a customer shall, within twenty four hours of the execution of the order, transmit to the customer a confirmation which shall include the following information, namely:-

- i. date on which the order is executed;
- ii. name and number of the securities;
- iii. nature of transaction (spot, ready or forward and also whether bought or sold);
- iv. price;
- v. commission, if the member is acting as a broker;
- vi. whether the order is executed for the member's own account or from the market."



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- 11.2 AND WHEREAS, the findings of the Enquiry Officer revealed that confirmations as mentioned above were not sent to clients on regular basis.
- 11.3 The Respondent made the following submission on the aforementioned issue:
- The Respondent asserted that most of its clients are residing outside Pakistan to whom it sends email within 24 hours of execution of their trades. Whereas some of its clients themselves collect trade confirmations from its house.
- 11.4 I have considered the Respondent's assertions on the issue and I am of the view that the Respondent is not fully complying with the requirement of the Rule 4(4) of the 1971 Rules. Although Respondent is sending trade confirmations to its clients residing abroad, however, giving trade confirmation to local clients is only given when they visit the house of Respondent. The Respondent should communicate the trade confirmation to every client within 24 hours of execution of their trades as required under the above mentioned Rule instead of giving trade confirmations to the clients only when they visit Respondent's house.
- 11.5 Considering the above mentioned fact I am inclined, on this occasion, to take a lenient view in the matter and will not take any punitive action under Rule 8 of the Brokers Rules. As such, I believe that a caution in this instance to the Respondent would suffice and I would further direct the Respondent to ensure that full compliance be made of all the laws, regulations and directives of the Commission in future for avoiding any punitive action under the law.
12. **Separate Bank Account for Clients Funds ("Issue No. 5")**
- 12.1 In terms of Commission's directive No. SMD/SE 2(20)/2002 dated March 4, 2005 which states that:
- "The exchanges are to ensure that brokers follow the practice of segregating clients' assets from the broker's assets in order to ensure that clients' assets are not misused.
- For this purpose brokers should have one separate bank account which includes all the cash deposits of their clients along-with records/breakdown of client positions."
- 12.2 The findings of the Enquiry Officer revealed that the Respondent was not maintaining a separate bank account for clients' funds.
- 12.3 The Respondent made the following submission on the aforementioned issue:
- The Respondent in its written reply dated September 28, 2007 acknowledged that it is not maintaining a separate account for clients' funds. During the hearing the Respondent stated that it was not aware of the requirement of the maintaining a separate bank account for clients' funds, however, it will now comply with the said requirement of the Commission's directive.



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- 12.4 I have considered the assertions of the Respondent and it is clear to me that the Respondent has failed to comply with the above mentioned directive of the Commission. The Respondent's statement that it was not aware of the Commission's direction on maintenance of separate bank account for clients' funds does not absolve it from its obligation to comply with Commission's directive and therefore, can not be taken as sufficient explanation/excuse.
- 12.5 Considering the above facts and the contentions of the Respondent, it is established that Respondent has failed to comply with Commission's directive. In terms of Rule 8 of the Brokers Rules, more particularly sub rule (v) therefore, where the Commission is of the opinion that a broker has inter alia failed to comply with any requirements of the directions of the Commission it may in the public interest, take action under Rule 8(a) or (b) of the Brokers Rules.
- 12.6 In light of the above i.e. the fact the Respondent failed to comply with Commission's directive thereby attracting sub rule (v) of the Rule 8 of the Brokers Rule. However, based on the Respondent's statement that it will comply with the requirements of aforementioned directive of the Commission and assured that that such violations will not occur in future I am inclined, on this occasion, to take a lenient view in the matter and will not take any punitive action under Rule 8 of the Brokers Rules. As such, I believe a 'caution' in this instance to the Respondent would suffice and I would further direct the Respondent to ensure that full compliance is made of all rules, regulations and directives of the Commission in the future for avoiding any punitive action under the law.
13. As stated above, the Respondent is penalized as follows:
- As regards Issue No1, as stated above, a penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) is imposed.
 - No punitive action is taken in relation to Issue No. 2, 3, 4 and 5 and a simple caution will suffice.
- 13.1 The matter is disposed of in the above manner and the Respondent is directed to deposit the fine with the Commission not later than fifteen (15) days from the receipt of this Order.


Imran Inayat Butt
Director (SM)
Securities Market Division