



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
SECURITIES MARKET DIVISION

Before the Executive Director (Securities Market Division)

In the matter of Show Cause Notice issued to

**Motiwala Securities (Private) Limited**

**Under Rule 8 read with Rule 12 of the Brokers and Agents Registration Rules, 2001 ("the Brokers Rules") and Section 28 of the Central Depositories Act, 1997 ("the CDC Act")**

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Number and date of Notice	SMD-SOUTH/SCN/123/07 dated October 10, 2007
Date of hearing	November 01, 2007
Present	Mr. Shahid Ali – CEO
Date of Order	January 22, 2008

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**ORDER**

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1. This order shall dispose of the proceedings initiated through Show Cause Notice SMD-SOUTH/SCN/123/07 dated October 10, 2007 ("**Show Cause Notice**") issued to Motiwala Securities (Pvt.) Limited (the "**Respondent**") by the Securities and Exchange Commission of Pakistan (the "**Commission**") under Rule 8 of 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 to the Brokers Rules and under section 28 of the CDC Act.
2. Brief facts of the case are that the Respondent is a member of the Karachi Stock Exchange (Guarantee) Limited (the "**Exchange**") 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 ("**1969 Ordinance**") and KPMG Taseer Hadi & Co. ("**the Enquiry Officer**") was appointed as the Enquiry Officer under the above mentioned section inter alia:
  - a) to enquire into the dealings, business or any transaction by the Respondent during the period from April 1, 2006 to June 15, 2006 ("**the Review Period**");
  - b) to identify any and all the acts or omissions constituting the violation of the 1969 Ordinance and the Rules made thereunder; and
  - 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 ("**2002**



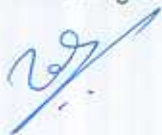
("2002 Regulations"), General Rules & Regulations of the Karachi Stock Exchange (Guarantee) Limited and The Central Depository Company of Pakistan Limited Regulations ("CDC Regulations") read with the CDC Act.

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 under cover of a letter dated May 10, 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, a Show Cause Notice was issued to the Respondent under Rule 8 of the Brokers Rules and under section 28 of the CDC Act, 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 and requirements of the CDC Act. Rule 12 of the Brokers Rule and clause A5 of the code of conduct 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 Act and the rules, regulations issued by the Commission and the stock exchange from time to time as may be applicable to them".

5. The Respondent was called upon to show cause in writing within seven days and appear before the Executive Director (SMD-South) on November 01, 2007 for a hearing, to be attended either in person and/or through an authorized representative.
6. The hearing was held on November 01, 2007 which was attended by Mr. Shahid Ali, the Representatives of the Respondent, who submitted a written reply and argued the case.
7. A summary of the contentions that were raised by the Respondent in the written reply / during the hearing and findings / conclusions of the Commission on the same are as follows:



8. **Blank Sales**

8.1 In terms of Regulation 4 of the 2002 Regulations, blank sales are not permissible. The findings of the Enquiry Officer revealed 2,444 instances of blank sales during the Review Period.

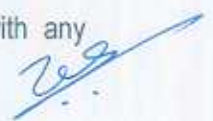
8.2 The Respondent made the following submissions on this Issue ("**Issue No. 1**"):

- The Respondent contended that the instances reported by the Enquiry Officer were not blank sales rather short sales as the respective clients had entered into contractual borrowing arrangements.
- The Respondent further submitted that the trades were not identified as short sale at the time of placement of order because the KSE KATS software did not provide for such facility in the review period.

8.3 I have considered the contentions of the Respondent and the same are addressed by me below:

- The existence of contractual borrowing arrangements demonstrate that that these instances were not blank sales rather the same were short sales as provided in Regulation 2(f) of the 2002 Regulations. However, in terms of Regulation 5 of the 2002 Regulations, one of the pre-requisites of a short sale is that "The trade is identified as a Short Sale at the time of placement of order" which was not met by the Respondent.
- It is incorrect to state that during the review period, the KATS did not provide the facility to identify the trade as short sale.
- Perusal of the information submitted by the Respondent transpired that 434 out of 2,444 instances were not blank sales as the respective customers had purchased the shares before making the sale. However, no valid justification or supporting documents were provided for the remaining 2,010 instances

8.4 Considering the above facts and the contentions of the Respondent, it is established that on 2,010 occasions short sales have been made without meeting the pre-requisite criteria as provided in Regulation 5 of the 2002 Regulations. In terms of Rule 8 of the Brokers Rules, more particularly sub rule (ii), sub rule (iii) and sub rule (iv) thereof, where the Commission is of the opinion that a broker has inter alia failed to comply with any





requirements of the Securities & Exchange Commission of Pakistan Act, 1997 ("**1997 Act**") or the 1969 Ordinance or of any rules or direction made or given thereunder 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.

- 8.5 In light of the above i.e. the fact that the Respondent made short sales without meeting the prescribed pre-requisite, the Respondent has violated the 2002 Regulations thereby attracting sub rule (iii) of 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 Rule 8 of the Brokers Rule. Accordingly, a penalty of Rs.100,000 (Rupees One Hundred Thousand) is hereby imposed on the Respondent under Rule 8 (b) of the Brokers Rules.

## 9. Order Register

- 9.1 In terms of Rule 4(1) of the Securities and Exchange Rules 1971 ("**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, 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."

- 9.2 Findings of the Enquiry Officer revealed that the register as mentioned above was not maintained by the Respondent during the Review Period.

- 9.3 The Respondent made the following submission on this Issue ("**Issue No. 2**"):

- The Respondent contended that the register as provided above was maintained and the sample was provided to the Enquiry Officer.

- 9.4 I have considered the contention of the Respondent and am of the view that the register as mentioned by the Respondent is not a substitute for the Order Register as required under the Rule 4(1) of the 1971 Rules, since the register maintained by the Respondent only

records those orders that are placed by the brokerage house into KATS and not the orders received from the clients.

9.5 The Commission is also cognizant of the practical difficulties associated with the maintenance of such an Order Register manually and in order to facilitate the brokerage houses in meeting the requirements of the said rule, the KSE is developing a system which will be provided in due course. However, it is noted with disappointment that the brokerage houses and exchanges were not able 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 requirements of the Rule 4(1) of the 1971 Rules.

9.6 Considering the above mentioned facts 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 the Regulations in future for avoiding any punitive action under the law.

#### 10. Change in trades

10.1 In terms of Clause A 1 and A2 of the code of conduct contained in the Third Schedule read with Rule 12 of the Brokers Rules, it is provided that:

A1-"A broker shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business"

A2-"A broker shall act with due skill, care and diligence in the conduct of all his business."

10.2 Findings of the Enquiry Officer revealed various instances where trades entered into KATS on account of a client were subsequently assigned to another client in the Back Office record.





- 10.3 The Respondent made the following submissions on this Issue ("**Issue No. 3**"):
- The Respondent contended that the above mentioned instances were a result of error.
  - The Respondent further contended that KSE had realized the possibility of human mistakes and has therefore, made it mandatory to report correction in client codes. The Respondent also submitted that there was no requirement of reporting the correction in client codes in the Review Period.

10.4 I have considered the contentions of the Respondent and the issues raised therein and am of the view that despite the fact that during the Review Period there was no legal requirement to enter trades through a unique ID for each client, in order to ensure the practice of fair trade and due skill, care and diligence in conduct of business, the Respondent must have entered correct KATS ID for its clients. Subsequent modification of trades and their allocation to another customer creates opportunities to disguise any violation of laws and regulations that might have occurred and the steps taken by the KSE also seek to prevent such attempts.

10.5 In light of the above the Respondent has failed to comply with Clause A1 and A2 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.1,000 (Rupees one thousand only) is hereby imposed on the Respondent under Rule 8 (b) of the Brokers Rules.

**11. Difference between the number of shares entered in CFS and the number of shares released**

11.1 In terms of Rule 8 1(a) and (c) of the 1971 Rules, it is provided that:

"Every member shall prepare and maintain, as required by sub-section (1) of section 6, the following books of account and other documents in a manner that will disclose a true, accurate and up-to-date position of his business, namely:-

- (a) journal (or other comparable record), cash book and any other books of original entry, forming the basis of entries into any ledger, the books of original entry being such as contain a daily record of all orders for purchase or sale of securities, all

purchases and sales of securities, all receipts and deliveries of securities and all other debits and credits; .....

- (c) ledgers (or other comparable records) reflecting securities in transfer, securities borrowed and securities loaned and securities bought or sold, of which the delivery is delayed".

11.2 The Respondent made the following submission on this Issue ("**Issue No. 4**"):

- The Respondent submitted a reconciliation of the number of shares entered and released.

11.3 In the light of above, no punitive action is required under Rule 8 of the Brokers Rule.

## 12. CDC Balance statements

12.1 In terms of Regulation 6.2A.1 of the CDC Regulations, it is provided that:

"Every Participant shall send by the 10th day of every month to all Sub- Account Holders maintaining Sub-Accounts under the control of such Participant Holding Balance statements showing the number of every Book-entry Security entered in every such Sub-Account as of the end of the preceding month. Such Holding Balance statements shall be generated from the CDS and shall be sent to the Sub-Account Holders in the manner set out in Regulation 2.6.4."

12.2 Findings of the Enquiry Officer revealed that the Respondent did not have a practice to send the CDC Balance statements to all of its customers by the 10<sup>th</sup> of each month as required under the CDC Regulations.

12.3 The Respondent made the following submission on this Issue ("**Issue No. 5**"):

- The Respondent submitted that it regularly sends CDC Holding statements to its clients through courier service. The Respondent submitted supporting documents for this claim.





- 12.4 Considering the above mentioned facts no punitive action is required under section 28 of the CDC Act.
13. In view of what has been discussed above, I am of the considered view that no punitive action is necessary in relation to Issues No. 2, 4 and 5 and a simple caution will suffice in case of Issue No.2. As regards Issue No. 1, and 3, as stated above, penalties of Rs. 100,000 (Rupees One Hundred Thousand) and Rs. 1,000 (Rupees One Thousand) are respectively imposed, which should be deposited with the Commission not later than fifteen (15) days from the date of receipt of this Order.



**Zafar Abdullah**

*Executive Director  
Securities Market Division*