

2012 CLD 1936

**[Securities and Exchange Commission of Pakistan]**

Before Hasnat Ahmad, Director (BR&ICW)

Messrs EQUITY MASTER SECURITIES

(PRIVATE) LIMITED, MEMBER OF THE LAHORE STOCK

EXCHANGE (G) LIMITED: In the matter of

Show Cause Notice No. (BRL-148)/SE/SMD/2008 dated May 11, 2012, decided on 21<sup>st</sup> June, 2012.

***Securities and Exchange Ordinance (XVII of 1969)-***

*—Ss. 16 & 22--Securities and Exchange Rules, 1971, , R.4(4)--- Regulatory violations, complaint against— Complainant had alleged that due to regulatory violations committed by the company, he had suffered huge losses—Chief Executive Officer of the company had submitted that company, at the time of opening an account of a client, records the cell/mobile number of its client/account holder in good faith with the mutual understanding to use the same for sending S.M.S. texts including daily trade confirmations and Other market related information's—Since the SMS message/texts was not included in the acceptable modes of information as per Special Terms and Conditions of the "Standardized Account Opening. Form (SAOF)", and the SMS message/text sent to the complainant did not include all the information as required to be sent under R.4(4) of Securities and Exchange Rules, 1971, violation of said Rules and clauses of Special Terms and Conditions of "SAOF", stood, established— Company had made endeavors to put in place a system for dissemination of trade confirmations, which system was not recognized by the existing legal framework any dissemination of trade confirmation through the. system established by the company would not be deemed to be discharged of its obligations provided in the law—Company was duty bound to comply with the provisions of Securities and Exchange Ordinance, 1909 and Rules and regulations made there under—of a law had provided thing to be done in a particular way, that should only be done in that manner and in no other manner—Company, in the event of the complainant's failure to respond to the margin calls, should have liquidated his position instead of*

*extending the credit/financing and charging liquidation charges to him—Section 16 of Securities and Exchange Ordinance, 1969, had explicitly prohibited extension and maintenance of credit in contravention of the Rules—Contravention of 8.16 of Securities and Exchange Ordinance, 1969, stood established against the company, in circumstances—Violation of Ordinance, Rules and Regulations, being a serious matter, the Director (Broker Registration and Investor Complaints Wing) of the Commission, directed the company to pay the Securities and Exchange Commission by way of penalty a sum of Rs.300,000 on account of such violations, [pp.' 1937, 1941, 1943] A, B 81 C*

Muhammad Rafiq, Chief Executive Officer, Sultan Wall Khan, Company Secretary and Tahir Anwar, Corporate Manager " Authorized Representatives of Equity Master Securities (Pvt.) Ltd.

Ms. Asima Wajid, Deputy Director (BR&ICW) assisting the Director (BR&ICW).

Date of hearing: 29th May, 2012.

#### **ORDER**

HASNAT AHMAD, DIRECTOR (BR&ICW).—This" Order shall dispose of the proceedings initiated through Show Cause Notice ("**SCN**") No.(BRL-148)/SE/SMD/2008 dated May 11, 2Q12 issued to Messrs Equity Master Securities (Private) Limited, ("**the Respondent**") under section 22 of the Securities and Exchange Ordinance, 1969 ("**the Ordinance**").

2. Brief facts of the case are that the Respondent is a member of the Lahore Stock Exchange (G) Ltd. ("**the LSE**") and is registered with the Securities and Exchange Commission of Pakistan ("**the Commission**") as a broker under the Brokers and Agents Registration Rules, 2001 ("**the Rules**"). The Commission received a complaint from Ch. Abdul Hameed ("**the Complainant**") on April 22, 2011 alleging that due to regulatory violations committed by the Respondent he suffered huge losses.

3. While examining the said complaint certain regulatory violations on part of the Respondent were observed and the same were taken up with the Respondent. The Respondent failed to submit satisfactory response, therefore the SCN dated May 11,

2012 was Issued to the Respondent under section 22 of the Ordinance for *prima facie* contravention of section 16 of the Ordinance and Rule 4(4) of the Securities and Exchange Rules, 1971 ("**1971 Rules**") read with clauses 4, 6 and 17 of Special Terms and Conditions of the Standardized Account Opening Form ("**SAOF**") contained In LSE's General Regulations framed under section 34 of the Ordinance. The contents of the SQN are reproduced as under:--

*'Subject SHOW CAUSE NOTICE UNDER SECTION 22 OF THE SECURITIES AND EXCHANGE ORDINANCE, 1969.*

*WHEREAS, Messrs Equity Master Securities (Put.) Ltd. ('EMSPL') is a member of the Lahore Stock Exchange (Guarantee) Limited (CLSE") and registered with the Securities and Exchange Commission of Pakistan ("the Commission") as a broker under the Brokers and Agents Registration Rules, 2001 ("the Rules") since January 15, 2007.*

*2. WHEREAS, while examining a complaint received from Ch. Abdul Hameed the Complainant') against EMSPL, it came to the notice of the Commission that EMSPL sent the trade confirmations required to be sent in accordance with Rule A(A) of the Securities and Exchange Rules, 1971 ("1971 Rules") to the Complainant via SMS messages on his available cell number.*

*3. WHEREAS, Rule 4(4) of the 1971 Rules stipulates 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:-*

- (a) date on which the order is executed;*
- (b) name and number of the securities;*
- (c) nature of transaction (spot ready or forward and also whether bought or sold);*
- (d) price;*
- (e) commission, if the member is acting as a broker;*

*(f) whether the order is executed for the member's own account or from the market*

4. *WHEREAS, Clause 4 of Special Terms and Conditions of the Standardized Account Opening Form ("SAOF") contained in LSE'S General Regulations framed under section 34 of the Securities and Exchange Ordinance, 1969 rOrdinance<sup>1</sup>) and as executed by the Complainant, states that the Broker shall provide the confirmation of the executed transactions to the Account Holder at the address given by the Account Holder in the SAOF by means of acceptable mode of communication or by hand subject to acknowledgement receipt within 24 hours. And that clause IT of Special Terms and Conditions of the SAOF as executed, by the Complainant provides that the;*

*"acceptable mode of communication between the Account Holder(s) and the Broker shall be through letter . (courier/registered post/fax/Email) or by hand subject to receipt/ acknowledgement The onus of proving that the e-mail has been received by the recipient shall be on the sender sending the E-mail. Confirmation of order to clients made through fax or e-mail will have a time record."*

5. *WHEREAS, the EMSPL vide letter dated March 27, 2012 was advised to provide the evidence of trade confirmations sent to the Complainant in accordance with Rule 4(4) of the 1971 Rules and Special Terms and Conditions of the SAOF. The EMSPL vide letter dated March 31, 2012 intimated that the daily trade confirmations were sent to the Complainant via SMS messages on his cell number and the weekly statements were sent to the Complainant through Courier. However, copy of the courier slips were not provided by the EMSPL to the Commission. Thereafter, the EMSPL was put to notice vide letter dated April 6, 2012 that in accordance with special terms and conditions of SAOF, the acceptable mode of communication between broker and investor do not include SMS Messages and was accordingly advised to intimate as to whether, the complainant has given any instructions, to provide him the trade confirmations through SMS Messages, along with relevant evidence thereof.*

6. *WHEREAS, the EMSPL vide letter dated April 13, 2012 intimated that it has sent the*

*client-wise daily trade confirmations to its branches via e-mail and the branch office is responsible to deliver the same to the clients and in addition EMSPL adopted SMS service for all clients. However, the evidence of Complainants instruction to send the trade confirmation via SMS Message on his cell number was not provided.*

7. *WHEREAS the Complainant has also alleged that EMSPL used to provide financing through private sources. EMSPL vide letter dated May 2, 2011 was advised to provide the clarification/explanation to the above allegation imposed by the Complainant;*

8. *WHEREAS, the EMSPL vide letter dated May 7, 2011 intimated that the Complainant was requested to deposit the outstanding dues on regular basis but he never deposited the same, therefore, EMSPL was constrained to borrow funds from Batik and reluctantly charged the Complainant "Liquidation Charges".*

9. *WHEREAS, clause,6 of Special Terms and Conditions of the SAOF provides that;*

*"In the event that the Account Holder(s) fail(s) to deposit additional cash or securities as margin within one business day of the margin call (in writing), the Broker shall have absolute discretion to and, without further notice to Account Holder(s), liquidate the Account Holder(s) outstanding positions, including the securities purchased and carried in such account so that the margin is maintained at the required level".*

10. *WHEREAS, section 16 of the Ordinance provides that;*

*"No member or associate shall, in contravention of any /ides made under this Ordinance, directly or indirectly*

*(a) Extend or maintain credit or arrange for the extension or maintenance of credit, to or for any person for the purpose of purchasing or carrying any security; or*

*(b) Borrow on any security or lend or arrange for the lending of any carried for the account of a customer; or*

*(c) Pledge or arrange for the pledging of and security carried for the account of*

*any customer.”*

*11. WHEREAS, the Margin Trading Rules 2004 made under section 33 read with section 16 of the Ordinance were in force at the time of the occurrence and it appears that EMSPL arranged to extension of credit and financing to the Complainant in violation of the Margin Trading Rules.*

*12. WHEREAS in light of the facts mentioned above, it appears that EMSPL is prima facie in contravention of section 16 of the Ordinance and Rule 4(4) of the 1971, Rules read with clauses 4, 6 and 17 of the Special Terms and Conditions of SAOF contained in LSE's General Regulations framed under section 34 of the Ordinance.*

*13. AND WHEREAS, if any person contravenes or otherwise fails to comply with the provisions of this Ordinance or any rules or regulations made there under, the Commission may by order direct such person to pay line Commission by way of penalty such sum in accordance with section 22 of the Ordinance.*

*14. NOW THEREFORE, you are called upon to show cause in writing by May 22, 2012, as to why action in terms of section 22 of the Ordinance may not be initiated against EMSPL for the prima facie violations as stated above. You are further directed to appear in person or through an authorized representative (with documentary proof of such authorization) before the undersigned, on May 29, 2012 at 3-00 p.m. at the Commission's Head Office at 9th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad. You are advised to bring all relevant record in original, which you may consider necessary for your defense /clarification. This notice sufficiently discharges the Commission obligation to afford EMSPL an opportunity of hearing In terms of section 22 of the Ordinance and in case of failure to appear on the stated date of hearing it will be deemed that EMSPL has nothing to say in its defense and the matter will be decided on the basis of available record.*

*Sd/-,*

*(Hasnat Ahmad)*

*Director (BR&ICW)”*

4. An opportunity of hearing was provided to the Respondent on May 29, 2012. During the course of hearing the Chief Executive Officer ("CBO") of the Respondent submitted that the Respondent at the time of opening an account of a client, records the cell/mobile number of its client/account holder in good faith with the mutual understanding to use the same for sending SMS Including daily trade confirmations and other market related information. Accordingly, 100% of its clients/account holders are in agreement with this system for dissemination of trade confirmations and other information and are satisfied with the SMS" Service. The CEO of the Respondent admitted that the SMS service is not Included In the prevailing Rules as an acceptable mode of communication, but at the same time contended that it is not forbidden under the law and in the context of being the latest and quickest mode of communication; It should have been Incorporated in the 1971 Rules.

5. The CEO of the Respondent Informed that the required trade confirmations and account statements were sent through e-mail to its branch offices and the branch manager thereof was bound to provide the printout of the same to all the working clients at the branch. In the instance case, apart from dally confirmations; the branch office forwarded the account statements showing ledger and holding to the Complainant through courier. Since the Complainant gave the address of the Mandi Bahauddin Branch Office of the Respondent as his mailing address in his account opening form, the Complainant used to receive all mails there from. This fact was confirmed by the Complainant during the meeting in the matter held at the Commission's office on March 19, 2012. In order to substantiate this averment, the copies of the courier slips were placed on record.

6. The CEO of the Respondent further contended that as per standard practice upon activation of trading account of a client, the Respondent used to send the client a "Letter of Thanks elaborating its services and simultaneously every client is allotted the user ID and Password to enable him/her to view online the account position, daily trade and holding from website of the Respondent I.e. [www.equitymastersecurities.com](http://www.equitymastersecurities.com). The CEO of the Respondent provided a copy of the "Letter of Thanks" dated, August 17, 21010 sent to the Complainant, whereby it was clearly- stated by the Respondent that the dally trade

confirmations would be sent through SMS Messages on his available cell number, account statement would be provided on weekly basis through courier and the Complainant could view or print his daily account position through website of the Respondent.

7. The CEO of the Respondent also submitted that the Complainant never disputed or denied even a single transaction throughout the entire trading period and or filed complaint at any platform, which Implies that all confirmations sent through SMS Messages were duly received and acknowledged.

8. With regards to the allegation of providing the financing through private sources to the Complainant, the Respondent submitted that it never induced the Complainant to receive financing through private sources. The Respondent used to send the margin calls to the Complainant on regular basis via SMS Messages and account statements showing debit balances through courier with the request on foot note to deposit the outstanding dues but the Complainant never responded to its repeated requests and on the other hand the Complainant continued to purchase securities through the Respondent by threats and intimidation. The Respondent further intimated that as a matter of principle, it manages funds from the chunk of its- own resources. The Complainant negatively affected its liquidity as he failed to clear the debit balance against him. Therefore, the Respondent reluctantly charged "Liquidation Charges" to the Complainant. His Respondent was compelled to charge the said charges just to discourage and restrain him from overbuying. Finally, the Respondent squared off his position and denied further buying in his account and accordingly Intimated the LSE vide letter #2252 dated March 30, 2011. The Complainant after one month of the last transaction lodged a baseless complaint against the Respondent.

9. I have examined the facts, evidences and documents on record, in addition to the written and verbal submissions made on behalf of the Respondent. My findings on the issues are as under:—

- (a) Since the SMS Message is not included in the ' acceptable modes of communication as per Special Terms and Conditions of the SAOP and that the SMS Messages sent to the Complainant did not Include all the information as



required to be sent under Rule 4(4) of the 1971 Rules, the violation of Rule 4(4) of the 1971 Rules read, with clause 4 and clause 17 of Special Terms and Conditions of the SAOF contained in LSE's General Regulations framed under section 34 of the Ordinance stands' established. I am mindful of the fact that the Respondent has made endeavors to put in place a system for dissemination of trade confirmations and admittedly, the information pertaining to trade confirmations was sent to the Complainant in terms of the system established by the Respondent. However, the said system is not recognized by the existing legal framework and any dissemination of trade confirmations through the system established by the Respondent will not be deemed to be discharge of its obligations provided in the law. The Respondent is duty bound to comply with the provisions of the Ordinance and rules and regulations made there under. It is settled law that If a law provides thing is to be done in a particular way, it should only be done in that manner and no other manner. Therefore, the contentions of the Respondent have no merit.

- (b) The perusal of the record transpires that the Respondent extended financing to the Complainant from private sources and not in accordance with the Margin Trading Rules, 2004. This fact is substantiated from the "Liquidation Charges" that were charged to the Complainant and this contention was not denied by the Respondent. The justification provided by the Respondent in this regard is untenable. Clause. 6 of Special, Terms and-Conditions of the SAOF In, this regard is clear and provides that;

*"In the event that the Account Holder(s) fail(s) to deposit additional cash or securities as margin within one business day of the margin call (in writing), the Broker shall have absolute discretion to and, without further notice to Account Holder(s), liquidate; the Account Holder(s) outstanding positions, including the securities purchased, and carried in such account, so that the margin is maintained at the required level"*

The Respondent, in the event of the Complainant's failure to respond to the margin calls, should have liquidated his position instead of extending the credit/ financing and charging liquidation charges to him. Section 16 of the Ordinance explicitly prohibits extension and maintenance of credit in contravention of the rules which in present case are the Margin Trading Rule?, 2004, Therefore, the contravention of section 16 of the Ordinance stands established against the Respondent.

10. In view of the foregoing, the violation of section 16 of the Ordinance and Rule 4(4) of the 1971 Rules read with clauses 4, 6 and 17 of Special Terms and Conditions of the SAOF contained in LSE's General Regulations framed under section 34 of the Ordinance stands established- In case any person contravenes or otherwise fails to comply with the provisions of this Ordinance or any rules or regulations made there under, the Commission may by order direct such person to pay the Commission by way of penalty such sum in accordance with section of the Ordinance.

11. The violation of the Ordinance, rules- and regulations is, a serious matter and therefore I hereby direct the Respondent to pay the Commission by way of penalty a sum of Rs.300,000 on account Violation of section 16 of the Ordinance and Rule 4(4) of the 1971 Rules read with clauses 4, 6 and" 17 of Special Terms and Conditions of the SAOF contained in LSE's General Regulations framed under section 34 of the Securities and Exchange Ordinance, 1969.

12. This matter is disposed of in the above manner and the Respondent in, directed to deposit the amount of penalty as mentioned in paragraph in above in the account of the Commission being maintained In the designated branches of the MCB Bank Limited not later than thirty (30) days from the date of this Order and furnish copy of the deposit chalan to the undersigned.

13. The order is' \issued without prejudice to any other action that the Commission may Initiate against the Respondent In accordance with the law on matters subsequent taken up or investigated and/or brought to the knowledge of the Commission.

HBT/41/SEC

Order accordingly.