

Before the Director (Market Supervision & Registration Department)
Securities Market Division
Securities and Exchange Commission of Pakistan

In the matter of Show Cause Notice Dated January 23, 2013 issued to
Al-Hoqani Securities & Investment Corporation (Private) Limited, Broker Karachi Stock
Exchange Limited

Date of Hearing: February 7, 2013

Present at the Hearing: 1. Mr. Dawar Raza Kazmi (CEO)
2. Syed Akbar Naqi (Director)

Representing SECP (SMD): Ms. Saima Shafi Rana (Deputy Director-MSRD)

ORDER

1. This Order shall dispose of the proceedings initiated through Show Cause Notice No. 4(BRK-199)SE/SMD/05 dated January 23, 2013 (“**the SCN**”) under section 22 of the Securities and Exchange Ordinance, 1969 (“**the Ordinance**”) issued to M/s. Al-Hoqani Securities & Investment Corporation (Private) Limited (“**the Respondent**”), TREC Holder of the Karachi Stock Exchange Limited (the “**KSE**”) and a broker registered under the Brokers and Agents Registration Rules, 2001 (“**Brokers Rules**”).

2. Brief facts of the case are that the Securities & Exchange Commission of Pakistan (“**the Commission**”) in exercise of its powers under Sub section (1) of Section 6 of the Ordinance read with Rule 3 and Rule 4 of the Stock Exchange Members (Inspection of Books and Record) Rules, 2001 (the “**Inspection Rules**”) ordered an inspection of the books and records required to be maintained by the Respondent.

3. The report dated November 06, 2012 submitted by the Inspection Team highlighted major irregularities in calculation of Net Capital Balance (‘NCB’) of the Respondent as on June 30, 2012 and it appeared that NCB was not in accordance with the Third Schedule of the Securities and Exchange Ordinance, 1969 (the “**SE Rules**”). Thereafter, the Commission served a SCN to the Respondent, the contents of which are reproduced below:

SUBJECT: *SHOW CAUSE NOTICE UNDER SECTION 22 OF THE SECURITIES AND EXCHANGE ORDINANCE, 1969 READ WITH RULE 8 OF THE BROKERS AND AGENTS REGISTRATION RULES, 2001*

WHEREAS, M/s. Al-Hoqani Securities & Investment Corporation (Private) Limited (“AHSIC”) is a Trading Rights Entitlement Certificate (“TREC”) Holder of the Karachi Stock Exchange Limited and registered as a broker with the Securities and Exchange Commission of Pakistan (“Commission”) under the Brokers and Agents Registration Rules, 2001 (“Brokers Rules”).



2. *AND WHEREAS*, the Commission in exercise of its powers under Sub-section (1) of Section 6 of the Securities and Exchange Ordinance, 1969 (the "**Ordinance**") read with Rule 3 and Rule 4 of the Stock Exchange Members (Inspection of Books and Record) Rules, 2001 ("**Inspection Rules**") ordered an inspection vide order No. SMD/MS&CID-C&IW/10-1(145)/2012 dated September 4, 2012 of the books and record required to be maintained by AHSIC. The Inspection Team after conducting inspection of Books and Record of AHSIC submitted the inspection report to the Commission on November 06, 2012 which was forwarded to AHSIC in accordance with Rule 7 of the Inspection Rules and response thereof was received on November 23, 2012.

3. *AND WHEREAS*, on review of the inspection report, it has been observed that the Net Capital Balance ("**NCB**") of AHSIC as on June 30, 2012 is not in accordance with the Third Schedule of the Securities and Exchange Rules, 1971 ("**1971 Rules**") and following discrepancies were observed which if not done would have resulted in a negative balance of Rs. 68,131,204

- i. Securities purchased for clients were **overstated** by an amount of Rs. 119,518,098
- ii. Trade receivables were **understated** by an amount of Rs. 621,803
- iii. Investment in listed securities in the name of company were **overstated** by an amount of Rs. 79,313
- iv. Total Current Assets were **overstated** by an amount of Rs. 118,975,608
- v. Trade payables were **understated** by an amount of Rs. 367,449
- vi. Other liabilities were **understated** by an amount of Rs. 5,150,143
- vii. Total Current Liabilities were **understated** by an amount of Rs. 5,517,592
- viii. NCB was overstated by an amount of Rs. 124,493,200

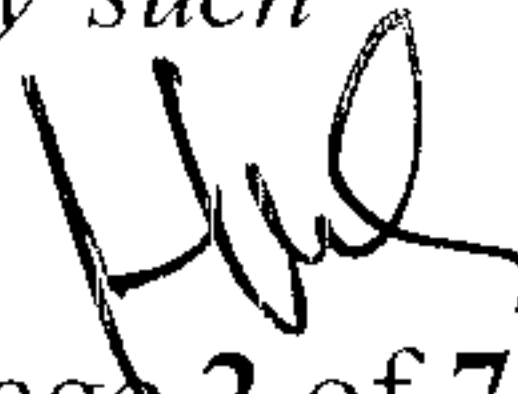
4. *AND WHEREAS*, prima facie it appears that the NCB as calculated by AHSIC is not in accordance with the Third Schedule of the 1971 Rules and that by submission of overstated NCB AHSIC has prima facie given information which it had reasonable cause to believe to be false or incorrect in material in violation of Section 18 of the Ordinance, which reads as follows:-

"No person shall, in any document, paper, accounts, information or explanation which he is, by or under this Ordinance, required to furnish, or in any application made under this Ordinance, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect in any material particular."

5. *AND WHEREAS*, in light of the facts mentioned above, prima facie it appears that AHSIC is in contravention of Third Schedule of the 1971 Rules read with Section 18 of the Ordinance, the contravention of which invokes penalty under Section 22 of the Ordinance and Rule 8 of the Brokers Rules.

6. *AND WHEREAS*, sub-section (1) of Section 22 of the Ordinance provides that:

"If any person refuses or fails to furnish any document, paper or information which he is required to furnish by or under this Ordinance; or refuses or fails to comply with any order or direction of the Commission made or issued under this Ordinance; or contravenes or otherwise fails to comply with the provisions of this Ordinance or any rules or regulations made thereunder, the Commission may if it is satisfied after giving the person an opportunity of being heard that the refusal, failure or contravention was willful, by order direct that such person shall pay to the Commission by way of penalty such


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sum not exceeding fifty million rupees as may be specified in the order and in the case of continuing default, a further sum calculated at the rate of two hundred thousand rupees for every day after the issue of such order during which the refusal, failure or contravention continues.”

7. **AND WHEREAS**, Rule 8 of Brokers Rules provides that;

“...Where the Commission is of the opinion that a broker has furnished wrong or false information, the Commission may, if it considers necessary in the public interest so to do, by order in writing suspend the registration of a broker for such period as may be specified in the order or impose on a broker fine..”

8. **NOW THEREFORE**, you are hereby called upon to show cause in writing by February 4, 2013, as to why action as provided under Section 22 of the Ordinance and/or Rule 8 of the Brokers Rules may not be initiated against AHSIC for violation as indicated above. You are further directed to appear in person or through an authorized representative (with documentary proof of such authorization), on **February 7, 2013 at 11:00 a.m.** at the SECP Headquarters – Islamabad. You are advised to bring all relevant record in original, which you may consider necessary for clarification or in your defense. This notice sufficiently discharges the Commission’s obligation to afford AHSIC an opportunity of hearing in terms of Section 22 of the Ordinance and Rule 8 of the Brokers Rules. In case of your failure to appear on the stated date of hearing it will be deemed that AHSIC has nothing to say in its defense and the matter will be decided ex-parte on the basis of available record.

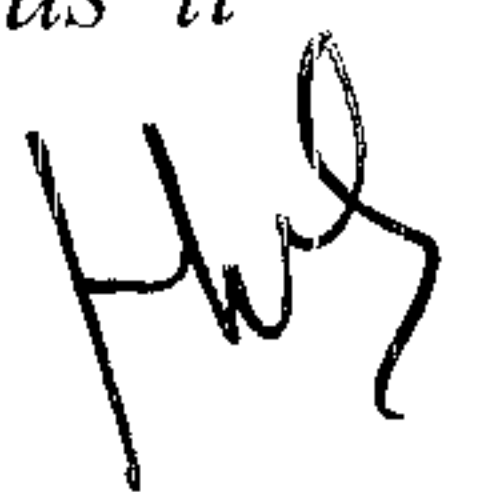
9. Please note that this show cause is being issued without prejudice to any action, which may be taken or warranted for the above said or any other default under the above referred or any other provisions of law. Kindly acknowledge receipt of this show cause notice through return fax or courier at your earliest.

Sd/-
Hasnat Ahmad
Director

4. The Respondent submitted a written response to the SCN dated February 4, 2013. The following arguments were put forward by the Respondent in its written response.

a) **Overstatement of Securities Purchased for Clients:** In this connection, the Respondent in its written response stated as follows:

“..The difference is by and large attributable to the fact that the outstanding balance against the securities purchased for and on account of Mr. Hoqani's son, a total value of Rs. 21,437,417/- and the financial costs charged on the outstanding balance against the securities purchased by Mr. Hoqani and Group under said Account of the total value of Rs. 102,114,352/- have not been accepted by the Inspection Team, as part of the Trade Receivables. Mr. Hoqani has issued written confirmation committing to make the payments for self as well as on behalf of his son and his Family Group. Hence, AHSIC is not exposed in any manner. The total value of the securities held against these two Accounts far exceeds the outstanding aggregate of Rs. 123,551,769/-. Thus it falls within the Current Assets.”



“AHSIC has not extended or maintained any credit facilities to any of its clients, including Mr. Hoqani or his son. According to our legal counsel, financial costs for delayed payments are permissible under Section 74 of the Contract Act, 1872. We honestly believe that the securities may be transferred to a collateral account, only when the broker finally decides to sell the securities. In the instant case, since the subject accounts pertain to Mr. Hoqani who is the sole owner of the issued shares of AHSIC and his family members, there is no exposure whatsoever. Moreover, it is also the market practice for the brokers to carry on debit balances of prestigious clients where payments are not in jeopardy.

Late payment charges or financial costs or liquidated damages by whatever name called are applied to such clients to cover the financial costs of brokers. This charge can by no means be considered as financing or extending or maintaining of credit to any client for purchase of securities. In fact, when Mr. Hoqani places orders and there is no financing or credit arrangement. If we do not recover financial costs, there will be a serious impact on our balance sheet.”

- b) **Understatement of Trade Receivables:** In this connection, the Respondent in its written response stated as follows:-

“The amount of Rs. 621,803/- was inadvertently classified in the Trade Receivables by the Commission as it was a part of other receivables and therefore, were not included in "trade receivables" for the calculation and preparation of Net Capital Balance. However, this does not mean that AHSIC has understated this amount. The term under-statement connotes deliberate suppression of any material fact or figure with a view to gain any advantage. In the instant case, inadvertence to take this trivial sum as part of Trade Receivables as Current Assets is in fact against AHSIC's own interest. Had this sum been taken as part of Current Assets, its NCB would have been higher to that extent. Hence, this cannot be a case of understatement”

- c) **Overstatement of Investment in Listed Securities:** In this connection, the Respondent in its written response stated as follows:

“AHSIC had purchased certificates of KASB Modaraba during the last week of June 2012 of trading at the Karachi Stock Exchange. The settlement of this transaction was effectuated on July 3, 2012. Hence, the securities purchased were rightly shown as investments in AHSIC's book. The deliveries of these securities already purchased were eventually received by AHSIC through clearing on July 3, 2012, being the settlement date.”

- d) **Overstatement of Total Current Assets:** In this connection, the Respondent in its written response stated as follows:

“This para is merely a summation of the figures given in Points No. i, ii and iii of Para 3 of the Show Cause Notice, which have been fully explained above”



- e) **Understatement of Trade Payables:** In this connection, the Respondent in its written response stated as follows:

“This amount of Rs.367.449 million .relates to petty sum recoverable from various small investors. This amount were inadvertently not taken.”

- f) **Understatement of Other Liabilities:** In this connection, the Respondent in its written response stated as follows:

“This materially reflects a long term loan granted by Al Hoqani Estate and Developers (Private) Limited, a private limited company which is not a subsidiary of any public company. The inspection team solely relied on the trial balance and did not observe that this is a long term liability disclosed both in the 2012 and 2011 Financial Statements. Since this amount was not payable in the near future, this was not included for the calculation of the Net Capital Balance”

During the hearing the Respondent showed the 2012 financial accounts wherein this amount was classified as long term liability.

- g) **General Observation:** The Respondent in its written response stated as follows:

“AHSIC has obtained finances from various banks and institutions which are duly secured by the securities provided by Mr. Hoqani by pledge of his shares worth Rs. 1,581,229,750/- against the financing of Rs. 460,838,694/-. There are surplus assets of the total value of over Rs. 1.120 Billion (aprox) against financing of Rs. 460.8 million. Mr. Hoqani's securities are available to meet any liability of AHSIC, as he is the sole sponsor and owner of 99.99% shares of AHSIC. Therefore in fact, AHSIC holds 1.120 billion surplus assets in AHSIC in form of his personal shares of various companies, which are made available by Mr. Hoqani for the purpose of meeting any unforeseen liabilities of AHSIC. A written commitment to that effect can be obtained from Mr. Hoqani.

In the instant case, neither AHSIC, nor its directors or officers had reasonable cause to believe that the NCB Certificate contained false information as they had acted in good faith. Moreover, the NCB Certificate was also certified by AHSIC's Auditors, who concluded that:

Based on their view, nothing has come to their attention that causes them to believe that the accompanying computation was not presented fairly in all material respects in accordance with Rule 2(d) of, and Third Schedule of the Securities and Exchange Rules, 1971.

AHSIC and its directors and officers had acted in good faith with no intention of submitting any false information or documents. Hence, no case of proceeding under Section 18 of the Ordinance has been made out.we respectfully submit that there is no willful contravention... The Hon'ble Commission may rest assured that AHSIC shall be extremely cautious in preparing and issuing NCB in future so that such misunderstanding does not arise. However, without prejudice to our

preceding submissions, AHSIC respectfully requests the Commission to take a lenient view of some trivial inadvertences mentioned above.

5. The arguments raised by the Respondent are discussed and appraised hereunder in seriatim:

a) Overstatement of Securities Purchased for Clients

From perusal of the record, it was apparent that Account No. 1025 was basically used by the Respondent to record the personal expenses of Mr. Al-Hoqani and family members and also comprised mainly of late payment charges on debit balances of Mr. Al-Hoqani and his family members. Since charging of late payment charges are prohibited under section 16 of the Ordinance therefore the amount appearing in the said account cannot be considered for calculation of NCB. Hence question of allocation of value of securities against said account does not arise.

It is also evident from the perusal of the record that the Respondent included full amount of receivables amounting to Rs. 21.437 million from Mr. Ahmed Sulaiman Ahmed Saeed. However, as per the facts the said amount was overdue for more than 14 days and it is also important to mention that no shares were available in sub-account of Mr. AHMED Sulaiman Ahmed Saeed; therefore, the value of the securities against overdue balance should have been treated as Nil. Further, shares appearing in one's sub-account cannot be treated as owned by another person merely on the basis of a confirmation.

b) Understatement of Trade Receivables

The perusal of record shows that the amount of Rs.621,803 was receivable from Ms. Uzma Abbas and her ledger was appearing in the subsidiary ledger of clients showing transaction of trading and others, however, Respondent stated that this was not a trade receivable.

c) Overstatement of investment in listed securities & Understatement of other liabilities

The stance of the Respondent is accepted.


6. I have examined the facts, evidences and documents on record, in addition to the written and verbal submissions made on behalf of the Respondent. It is apparent that if "Securities Purchased for Clients" was calculated correctly, the NCB would have been negative. It is further established that the Respondent was in violation of Section 16 of the Ordinance.

7. The violation of the Ordinance, rules and regulations is a serious matter. However, taking a lenient view and in view of the regulatory violations as discussed above, through this Order, the Respondent is directed to deposit a sum of Rs. 100,000 (Rupees One Hundred Thousand Only) under Section 22 of the Ordinance to the Commission by way of penalty. The Respondent is further directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.



8. The matter is disposed of in the above manner and the Respondent is directed to deposit the penalty 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 copy of the deposit challan to the undersigned.

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


Hasnat Ahmad
Director (MSR.D)

Announced on April 11, 2013
Islamabad.

