



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
CYAN Limited, through its Chief Executive Officer

Date of Hearing:

November 19, 2012

Present at the Hearing:

Representing CYAN Limited

(i) Mr. Sulaiman S. Mehdi

Chief Operating Officer

(ii) Mr. Faisal Nadeem

Chief Financial Officer

Assisting the Director / HOD (SMD)

(i) Mr. Muhammad Ali

Deputy Director

ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. Misc / MSW / SMD / 1 (05) 2004/ 1636 ("SCN") dated November 06, 2012 issued by the Securities and Exchange Commission of Pakistan ("Commission") under Section 22 the Securities and Exchange Ordinance, 1969 ("Ordinance") to CYAN Limited ("the Respondent") through its Chief Executive Officer.

2. The brief facts of the case are that the Dawood Hercules Corporation Limited ("DAWH") in its notice dated July 23, 2012, addressed to the three stock exchanges, informed that the meeting of the Board of Directors ("BOD") of DAWH will be held on July 31, 2012 to consider the Annual Accounts of the Company for 2nd quarter ended June 30, 2012. In the same notice DAWH determined the closed period from July 24, 2012 to July 31, 2012 (both days inclusive) wherein no Director, CEO or Executive shall, directly or indirectly, deal in the shares of DAWH in any manner during the closed period. It is



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pertinent to mention here that Mr. Abdul Samad Dawood is member of BOD of DAWH and is also Chief Executive Officer ("CEO") of the Respondent. Further, both the companies have two more common Directors. The details of the said three common Directors of DAWH and the Respondent are given in Table-1 below:-

Table - 1

Sr. No.	Name	Position held in DAWH	Position held in CYAN
1	Mr. A. Samad Dawood	Director	CEO / Director
2	Mr. Shahid Hamid Pracha	Director	Director
3	Mr. Isar Ahmad	Director	Director

3. On perusal of Ready Market trading data of the Karachi Stock Exchange Limited ("KSE") for the month of July 2012 it was revealed that the Respondent sold 3,846,367 shares of DAWH in the month of July 2012 through Fortune Securities Limited ("FSL"), Trading Right Entitlement Certificate Holder/Broker of KSE. The day-wise trading details of the Respondent in the scrip of DAWH for the month of July 2012 are as under.

Table - 2

Sr. No	ORD_DATE	SOLD_QTY	SOLD_RATE (Rs.)
1	7/2/2012	202,037	33.32
2	7/3/2012	476,007	32.99
3	7/4/2012	30,000	32.84
4	7/5/2012	598,650	33.15
5	7/6/2012	320,214	32.83
6	7/9/2012	115,844	32.48
7	7/10/2012	152,926	32.16
8	7/12/2012	169,500	31.94
9	7/17/2012	98,189	31.30
10	7/18/2012	201,500	31.13
11	7/19/2012	1,211,500	31.40
12	7/25/2012	250,000	30.41
13	7/26/2012	20,000	30.25
Total		3,846,367	32.10

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4. The above-mentioned trading showed that the Respondent sold 250,000 shares and 20,000 shares of DAWH on July 25 and July 26, 2012 respectively which was announced as closed period by DAWH. Keeping in view the said fact, the Commission vide its letter dated September 13, 2012 sought the reasons/basis from the Respondent for selling the shares of DAWH during the closed period. However, no reply was received by the Commission. A reminder letter dated September 26, 2012 was again issued to the Respondent, however, the Respondent failed to respond to the Commission to clarify its position in the matter.

5. Consequently, SCN dated November 06, 2012 was issued to the Respondent under Section 22 of the Ordinance for violation of Clause 35 (xxii) of Listing Regulations of KSE. The Respondent through SCN was asked to explain its position through written reply within ten days of issuance of SCN and also appear in person or through an authorized representative before the undersigned at Commission's Head Office in Islamabad on November 19, 2012 for hearing.

6. The Respondent vide letter dated November 16, 2012 submitted its response to the SCN. The relevant contentions raised in the response are reproduced hereunder:-

"CYAN is a Company of Hussain Dawood Group ("HDG") whose standing policy has always been to conduct its affairs in accordance with the highest business, legal and ethical standards. Therefore, none of the Directors of CYAN would ever even think of trading in shares of listed companies during their closed periods, on the Boards of which they are also Directors of such companies. The gain or loss of a few million rupees, if any that may result in such trading would be meaningless, in the context of the size of HDG, its strategic investments and growth. More specifically, the individuals and corporate members of HDG who have impeccable reputation and strong presence in various sectors of the economy would not stoop as low as to make gains or avoid losses of meager sums of rupees by trading in shares of their own group companies."

"CYAN, a public listed entity is being professionally managed by independent team of professionals and only broad guidance and policy decision are provided by the Board of Directors. The primary objective of



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CYAN is to provide private equity to potential growth companies of Pakistan and CYAN's Chief Executive Officer, Mr. A. Samad Dawood ("ASD") has been fully involved in developing the private equity business of CYAN in the best interest of the shareholders. It is inconceivable that ASD would deliberately indulge in trading of the Shares of DAWH during the closed period. "

"ASD is not involved in managing the public equity portfolio of CYAN and is also not involved in its execution on day to day basis. Mr. Sulaiman S. Mehdi, the Chief Operating Officer independently manages the portfolio and its execution on the day to day basis and this can be verified from the Fortune Securities Limited, in relation to the transactions in DAWH. ASD is also not involved in execution of any trades since 2011 on behalf of CYAN and the same can be verified from all the brokers on CYAN's panel".

"Incidentally, ASD was busy in official meetings and other business exigencies on July 24 2012 and July 25, 2012, during the month of Ramzan when working hours were short and ASD could not attend CYAN's office on both these days. Hence, the portfolio manager could not be timely informed by ASD regarding the closed period of DAWH. Since Mr. Sulaiman S. Mehdi executes the trade and since he is not a Director on the Board of DAWH, he did not enjoy the privilege of being intimated as to the closed period and hence executed these trades in good faith without any knowledge of the closed period of DAWH".

"After execution of 20,000 Shares on July 26, 2012, it came to Mr. Sulaiman S. Mehdi's notice regarding closed period and the trades were stopped immediately. This can be verified from Fortune Securities Limited, who was the broker for the subject trades."

"You will appreciate that a bonafide error has occurred during the closed period of DAWH (July 25 and 26, 2012), but only due to oversight and non-availability of timely information, with no malafide intention of causing any loss to anybody or making gains or saving losses, out of these transactions."

"Please note that the total value trade comes to Rs.8.2 Million (270,000 shares) during the closed period (July 25 and 26, 2012) against total value trade of Rs.123 million (3,846,367 Shares) in DAWH during the month of July, 2012 which is just 7% of the total value traded in the

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month of July, 2012. The trades in DAWH shares on July 25 and 26, 2012 were executed at the lowest average price of Rs.30.40 against the total average of Rs.32/- per Share during the month of July 2012 and therefore it could not have caused loss to any buyer during the closed period. "

"We would just like to apprise you that the overall purchases and sales of Shares in CYAN portfolio from January 01, 2012 till October 31, 2012 are as follows:

	<u>Number of Shares</u>	<u>Value (Rs.)</u>
Purchases	134,990,951	4,742,417,419
Sales	93,226,973	4,895,598,045

"This clearly depicts that we have largely traded in the equities market and 270,000 Shares of the total value of Rs.8.2 million traded during closed period is an oversight on our part."

"ASD, the Chief Executive Officer of the Company had made a detailed presentation to its Board of Directors far back on October 23, 2010. In particular, Company's Portfolio Reallocation was the prime objective of the BRP and in his presentation; ASD had outlined the basic considerations and objectives for restructuring of the Company's business. In the final analysis, the Commission was pleased to revoke the Insurance Registration vide its Order dated November 30, 2011 and also approved the alteration to the Memorandum and Articles of Association and the Company's name was also changed to CYAN on December 08, 2011."

"Since then the Company's initiative has been to reduce the related parties exposure and in particular in the fertilizer sector. Accordingly, the Company offloaded the shares of related parties including Engro Corporation Limited ("ECL") and DAWH in line with the decision of the Board and shareholders. Further, the Company has made clear disclosures to the shareholders in its Annual Report 2011, 1st and 2nd quarter 2012 Accounts, its initiatives in reducing related parties exposure especially in ECL and DAWH through Directors' Report."

"It must therefore be appreciated that the decision to reduce the Company's exposure in Group Companies and in particular, the

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fertilizer companies was not only part of the BRP, but was also implemented subsequently in various phases. So much so, CYAN's holding in DAWH as at December 28, 2011, was 10,448,760 Shares, whereas on November 5, 2012, the holding has been reduced to only 794,380 Shares. This ongoing process continued, whereas Mr. Sulaiman S. Mehdi and others at CYAN were not aware of the closed period of DAWH. You will therefore appreciate that there is no willful violation of the provisions of the Clause 35(xxiii) [now Clause 35(xx)] of the Listing Regulations or Section 22(c) of the Securities and Exchange Ordinance, 1969 ("S&E Ordinance")."

"Sub-section (c) of Section 22 of the S&E Ordinance stipulates that if any person contravenes or otherwise fails or refuses to comply with the provisions of the S&E Ordinance or any other rules or regulations made thereunder, he would be liable to pay penalty if the Commission is satisfied that such refusal, failure or contravention was willful. While there is no failure or refusal to comply with the provisions of the S&E Ordinance or the Listing Regulations, the sale of the Shares of DAWH during the closed period was not willful, as explained above. Hence, the Commission is requested to take a lenient view and discharge the Show Cause Notice in the interest of justice."

"We are confident that the Commission will appreciate and understand our position".

7. The hearing in the matter was held on November 19, 2012. Mr. Sulaiman S. Mehdi Chief Operating Officer ("COO") and Mr. Faisal Nadeem, Chief Financial Officer ("CFO") appeared on behalf of the Respondent. They reiterated the arguments and submissions as presented in Respondent's above-mentioned written reply. Further, the COO during the course of hearing accepted that it was a mistake on part of the Respondent and should not have taken place. However, because of error, which by no means was intentional only 270,000 shares of DAWH were sold during the closed period. The COO further added that the Respondent belongs to a very well established and reputable group, with such repute the Respondent cannot even think of doing such activity with malafide intent. The COO prayed that the Commission may take a lenient view in this matter and drop the proceedings together with the SCN.



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8. I have perused the record and the written reply submitted by the COO on behalf of the Respondent. After a detailed and thorough perusal of the facts, information available on record and averments made by the COO during the course of the hearing, my observation on the same are as follow:

- i) During the hearing and in written reply the COO has not denied the sale of 270,000 shares by the Respondent during the closed period announced by DAWH. Further, the COO has accepted that it should not have sold the shares of DAWH during the closed period which is a violation of the Listing Regulations of the KSE. However, he emphasized that the violation was not intentional and as soon as he came to know about the violation he stopped sale of shares immediately.
- ii) With regard to COO contention that he was not informed about the closed period by the CEO, it may be noted that DAWH vide its notice dated July 23, 2012 had already informed the dates of closed period and same notice was placed at KSE website. The said information was in public domain and within access of public at large.
- iii) With regard to the COO arguments that CEO was not involved in the sale of shares during the closed period, it may be noted that CEO was aware that the Respondent was actively selling the shares of DAWH during the last two months and it was his statutory and fiduciary obligation to ensure that no trading takes place in the shares of DAWH by the Respondent during the closed period. Being CEO of the Respondent, he was responsible and liable for conduct of the Respondent and to ensure that all the acts of the company are in accordance with the law.
- iv) With regard to the COO contention that the trading by the Respondent during closed period constitutes a nominal percentage of the overall trading volume, we agree with said contention of the COO. However, the



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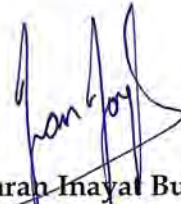
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volume and quantity of transactions may not be of very significant in the instant case. Here we have to look at the objective and intent of Law. As the Directors of the company are first source of inside information. Therefore, the spirit behind the announcement of closed period by the company is to bar the insider of the company to trade directly or indirectly and to get benefit of inside information.

9. The Respondent is one of the well reputed company of Pakistan and belongs to a very well known financial and industrial group. Accordingly the Respondent is expected to be conversant and fully complied with the regulatory requirements. Keeping in view the aforementioned averments made in written reply and during the course of hearing, it is established that the Respondent has sold shares of DAWN in the closed period thus violated the Clause 35 (xxii) of the Listing Regulation of the KSE.

10. The violation of the Rules and Regulations is serious matters which entitles the Commission to imposed penalty. However, on this occasion taking a lenient view, the Respondent is strictly warned to abstain from trading in such manner in future failing which appropriate action will be taken. I 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.




Imran Inayat Butt
Director / HOD (MSRD)

Announced on April 19, 2013
Islamabad.