



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

Mr. Abdul Samad Dawood, Director, Dawood Hercules Corporation Limited

Date of Hearing:

November 19, 2012

Present at the Hearing:

Representing Mr. Abdul Samad Dawood

(i) Mr. Sulaiman S. Mehdi

Chief Operating Officer

(ii) Mr. Faisal Nadeem

Chief Financial Officer

Assisting the Director / HOD (MSRD)

(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/ 1634 ("SCN") dated November 06, 2012 issued by the Securities and Exchange Commission of Pakistan ("Commission") under Section 15E (3) of the Securities and Exchange Ordinance, 1969 ("Ordinance") to Mr. Abdul Samad Dawood ("the Respondent") Director of Dawood Hercules Corporation Limited ("DAWH") and Chief Executive Officer of CYAN Limited ("CYAN").

2. The brief facts of the case are that the DAWH vide 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.

3. DAWH vide notice dated August 01, 2012 announced its financial results for 2nd quarter ended June 30, 2012 wherein loss of Rs. 214.363 million and Earning Per Share



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("EPS") of Rs. (0.45) was declared as compared to financial results of 1st quarter ended March 31, 2012 wherein DAWH posted profit of Rs. 871.147 million and EPS of Rs. 1.81.

4. During the month of May to July 2012, a major decline in the share price of DAWH was witnessed wherein its price decreased from Rs. 44.38 to Rs. 29.21 from May 10, 2012 to July 23, 2012. On perusal of Ready Market trading data of the Karachi Stock Exchange Limited ("KSE") from May 08, 2012 to July 26, 2012 ("the Period"), it was revealed that the CYAN sold 5,391,872 shares of DAWH at average price of Rs. 33.78 through Fortune Securities Limited ("FSL"), Trading Right Entitlement Certificate Holder/Broker of KSE. During the Period the CYAN trading volume constituted 28% of the total trading volume in the scrip of DAWH. It is important to note that during the last four and half years, i.e. from January 01, 2008 to April 30, 2012 the CYAN sold only 4,618,515 shares of DAWH at average price of Rs. 83.33 whereas during the Period CYAN sold substantial quantity of shares. Due to the heavy selling by CYAN prior to announcement of financial results, the share price of DAWH decreased rapidly.

5. The review of list of BOD of DAWH and the CYAN showed that the Respondent was the Chief Executive Officer of CYAN and also a member of BOD of DAWH. Moreover, there were two more common Directors in DAWH and the CYAN, the details of same are as under:-

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

6. The account opening form of the trading account of the CYAN was obtained from FSL which revealed that the Respondent and Mr. Sulaiman S. Mehdi, Chief Operating Officer ("COO") of the CYAN were the authorized persons to operate the trading account on behalf of the CYAN. Keeping in view the abovementioned facts, the Commission vide letter dated September 13, 2012 sought the rational from the CYAN for selling substantial



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number of shares of DAWH prior to the announcement of financial results of DAWH. However, no reply was received by the Commission. A reminder letter dated September 26, 2012 was issued to the CYAN wherein it was again requested to provide the requisite information failing which appropriate action will be taken against the CYAN under the relevant provisions of law. However, the CYAN again failed to respond to the Commission to clarify its position in the matter.

7. Consequently, SCN dated November 06, 2012 was issued to the Respondent under Section 15 E (3) of the Ordinance for disclosing the inside information to CYAN regarding the working and financial condition of DAWH. 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, Islamabad on November 19, 2012 for hearing.

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

"I am seriously perturbed over your captioned Show Cause Notice issued to me in my personal capacity, in which serious allegations of having indulged in Insider Trading in shares of Dawood Hercules Corporation Limited ("DAWH") have been leveled against me. The allegations have been made against me personally on the premise that CYAN Limited ("CYAN") of whom I am the Chief Executive Officer had sold 5,391,872 shares from May 8, 2012 to July 26, 2012 ("the Period") of DAWH of which I am one of the Directors."

"I am submitting this reply through my Authorized Representative, Mr. Sulaiman S. Mehdi ("Mr. Mehdi"), as I am currently out of the Country."

"It seems that you had earlier sent to me a letter dated September 13, 2012, followed by a reminder dated September 26, 2012, but the same escaped my attention. Upon my request to Mr. Mehdi, he checked the records and it transpired that both these letters had gone astray, due to the shifting of CYAN's office from 10th Floor to 4th Floor of Dawood Centre, Karachi at the relevant time. Had the two letters come to my timely attention, I would have clarified the position that I never indulged in Insider Trading and the Show Cause Notice, which has already caste a stigma on my career as a professional entrepreneur, could have been

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avoided."

"CYAN and I belong to 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, neither CYAN, nor I or any of its Directors would never even think of indulging in Insider Trading and that too for avoiding of a loss of merely a few million rupees, which in the context of the size of HDG, its strategic investments and growth would be meaningless. More specifically, the members of HDG and I with an impeccable reputation and a 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 our own group companies."

"Please appreciate that I am only a non-executive Director of DAWH and therefore I do not become privy to any price sensitive information of DAWH, except for the same information as is available to other non-executive directors of DAWH via board packs. As per notice of DAWH of July 23, 2012 to KSE, the meeting of the Board of Directors of DAWH was to be held on July 31, 2012 for considering the 2nd quarter accounts and the financial information for the period ending June 30, 2012. This was made available to me only on July 24, 2012. Furthermore, I was busy in official and other exigencies on July 24, 2012 and July 25, 2012 during the month of Ramzan when working hours were short and I could not attend CYAN's office on both these days. Hence, the question of my indulging in trading in the shares of DAWH or CYAN indulging in trading in the shares of DAWH during May 08, 2012 to July 26, 2012 on the basis of confidential and material information pertaining to operational and financial performance of DAWH does not arise. Therefore, effectively, CYAN disposing off holding of DAWH before the announcement of financial results by DAWH, based on price sensitive information allegedly becoming privy to me is misconceived and without any basis."

"The Commission is well aware of the fact that 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 CYAN is to provide private equity to potential growth companies of Pakistan and I have been fully involved in developing the private equity business of CYAN in the best interest of the shareholders, which the Commission has already witnessed CYAN's presence in the Pakistan 100 Conference sponsored by CYAN on the 9th and 10th of March 2012, held at Pearl Continental Hotel



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Lahore. In furtherance of this objective, a decision had already been made by CYAN's Board far back on October 23, 2010 and subsequently approved by the shareholders and also the decision was disclosed to and approved by the Commission. Therefore, the sale of the shares of DAWH during the Period mentioned in your Show Cause Notice was not based on any disclosed or undisclosed price sensitive information pertaining to DAWH but was in furtherance of the ongoing implementation of the decision made by the Board on October 23, 2010 (Annexure I)."

"Commission is also further aware of the fact that CYAN formerly known as "Central Insurance Company Limited" - ("the Company "), was an insurance company until its business was restructured and its insurance business was discontinued pursuant to a Business Restructuring Plan ("BRP") (Annexure II), after all corporate compliances and obtaining all regulatory approvals. The decision of business restructuring of the Company was made due to various factors, including the fact that only 2% of the Company's income accrued from its then core insurance business and 98% of the income had accrued from its investments."

"As the CEO of the Company, I had made a detailed presentation to the Board of Directors far back on October 23, 2010. In particular, Company's Portfolio Reallocation was the prime objective of my presentation, whereby I had outlined the basic considerations and objectives for restructuring of the Company's business. The investment portfolio was the primary driver of profitability that generated 98% of the Company's total profit, 79% of total investment portfolio was concentrated in HDG Companies with 76 % exposure to the fertilizer sector only. At that time, the composition of the portfolio comprised 59% in Engro Corporation Ltd. (ECL) and 17% in DAWH (Dawood Hercules Chemicals Ltd.), which needed to be reduced, especially keeping in mind high leverage of ECL and risks of gas supply to the fertilizer sector. Accordingly, it was proposed in the Presentation also captured in the minutes that the investment portfolio of the Company be reallocated whereby exposure in ECL would be reduced from 59% to 25% for generating cash upto 33 % of the total portfolio size and so also it was contemplated that exposure in DAWH would also be eventually reduced."

"Thereafter, the meeting of the Company's Board of Directors was held on January 27, 2011 (Annexure III) whereat BRP was approved for revocation of Company's insurance registration, holding of EOGM and

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alteration of Memorandum and Articles of Association. Subsequently, an EOGM was held on March 10, 2011 (Annexure IV) whereat shareholders approved the BRP along with change of name of Company and alteration of the Company's Memorandum of Association and Articles of Association."

"BRP is a legal document that was duly approved by the shareholders and which unequivocally stated the new objective of the Company of reducing its exposure into group companies, especially fertilizer stocks for undertaking active portfolio business."

"Based on the decision of the shareholders, separate applications were submitted to the Commission on May 09, 2011 for revocation of Company's Insurance Registration and Confirmation of the Alteration of the Company's Memorandum of Association. Another application for approval of change of name was also submitted to the Registrar of Companies. The Commission was pleased to revoke the Insurance Registration vide its Order dated November 30, 2011 (Annexure V) 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 (Annexure VI)."

"The shareholders appreciated the Company's initiative in reducing the related parties' exposure and accordingly, the Company offloaded the shares of related parties, including ECL and DAWH in line with the decision of the Board and shareholders. Further, the Company has made clear disclosure to the shareholders in its Annual Report 2011, 1st and 2nd quarter 2012 Accounts (Annexure VII) 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 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 (Annexure VIII)."

"Please beware that the woes of the fertilizer industry due to discriminatory gas curtailment of plants on SNGPL's network is no secret and has been the headline of all leading newspapers (Annexure IX)."

"You will appreciate that the decision to sell the shares of DAWH was not

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motivated by its financial results or any price sensitive information allegedly known to me or any other such factors, but was in essence continued implementation of the BRP that had been approved by the Board far back on January 27, 2011 and also by the shareholders, far back on March 10, 2011. More specifically, CYAN had already decided to offload the shares of DAWH gradually pursuant to the BRP. Therefore, how on earth this can be regarded as CYAN and/or I having indulged in Insider Trading? "

"Please also note that your basis of the time period i.e. last 4 and half years i.e. from January 01, 2008 to April 30, 2012 regarding disposal of DAWH shares by CYAN is incorrect and on top of it, the alleged quantity of 2,904,008 shares of DAWH said to be disposed off during this period at the average price of 47.53 per share is also mistaken as we have sold 4,618,515 in 2011 only at the average rate of 83.34. Major portfolio activities have been undertaken in 2011 and 2012 due to change in the business model of the company. The Company used to be the Central Insurance Company Limited and was primarily involved in undertaking general insurance business whereby all investments in group companies like DAWH, ECL, DLL and SNGPL were strategic investments. However, on October 23, 2010, I was appointed as new Chief Executive and Mr. Sulaiman S. Mehdi was appointed as new Company Secretary and Chief Operating Officer with an objective for undertaking active investment management business whereby the new business strategy of the Company was also deliberated upon and detailed presentation was made to the Board of Directors, especially in context to the portfolio reallocation."

"As mentioned above, CYAN's strategy to reduce its exposure in fertilizer sector was fully disclosed in CYAN's Annual Report for the year ended 2011. I am quoting herewith the extract from the Directors I Report under heading "Investment - Continuing Operations", as follows:-

Investment - Continuing Operations:

The Company has realigned its portfolio to complement its allocation towards high growth, low yield investments. To this effect, sizeable investments in group companies like Engro Corporation and Dawood Hercules were substituted by energy, oil and gas, cement companies and money market mutual funds. Reduction in group related companies has also served in mitigating the concentration risk towards the fertilizer sector. These equity investments by nature, are high yielding defensive positions that not only can improve cash flows from our investments was



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also provide protection from currency devaluations and are positively skewed rising oil pricing -----

Similar disclosure was made even in the Condensed Interim Financial Information (Un-audited) for the 1st quarter ended March 31, 2012 and 2nd quarter ended June 30, 2012.

So much so, in the Shareholders Presentation dated April 28, 2012 (Annexure X), on the Annual Accounts of 2011, the following disclosures were made under the heads "Highlights" and "Diversification of Investments":-

Highlights:

Company reduced its exposure to related parties and invests the proceeds in high yielding stocks.

Diversification of Investments:

- Portfolio diversification was a major driver of investment strategy
- Reduction of exposure was achieved from 78% to 40%

You will appreciate that the Company initially known as "Central Insurance Company Limited" and subsequently re-named as "Cyan Limited", has all along been implementing its decision to reduce the exposure in group companies and in particular, the fertilizer companies like DAWH and ECL which is a matter of common knowledge known to the entire business, commercial, financial and industrial sectors, as well as the shareholders and the Regulators, including the Commission as well as the Stock Exchanges. Hence, sale of shares of DAWH by CYAN cannot be regarded as an Insider Trading by CYAN or by me in my personal capacity. "

"The term "Insider Trading" has been defined in Section 15A(2) of the Securities and Exchange Ordinance, inter alia, to include an insider transacting any deal directly or indirectly using Inside Information involving listed companies. The term "Inside Information II has been defined to inter alia, mean information which has not been made public relating to directly or indirectly listed securities, if it were made public, would likely to affect on the prices of those securities. The intent of this Statute is to prohibit a person from gaining an advantage out of price sensitive information which comes to his knowledge and which has not



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been made public. Hence, there has to be a calculated motive and mens rea in any sale or purchase transactions. More specifically, there must be an instant decision not perceived previously, and based on any price sensitive information which comes to the knowledge of the insider and lures him to trade in the shares so as to make unlawful gains or unlawfully avoid losses, which certainly is not the case here. By no stretch of imagination, this can be applied to the sale of shares of DAWH by CYAN based on the decision already made far back in October 2010, to offload the shares gradually pursuant to the BRP, as approved by the Board and also by the shareholders and fully disclosed in CYAN's Financial Statements and Presentations. If a contrary view is taken, no company will be able to plan and implement its decisions on strategic investments and disinvestments in various phases if that is considered by the regulators as Insider Trading."

"Without prejudice to the preceding submissions and without admitting any of the contents of your Show Cause Notice, please note that the motive behind any Insider Trading is to make gains or to avoid losses. Have I made any gain or avoided any loss in my personal capacity? Have I sold any shares of DAWH?"

"The law on Insider Trading in Pakistan is fairly new and undeveloped as Sections 15A to 15E were incorporated under Chapter IIIA of the Companies Ordinance, vide Finance Act, 2008, whereas the Listed Companies (Prohibition of Insider Trading) Guidelines, 2000 were never implemented. Furthermore, Chapter IIIA is at variance with the earlier Guidelines issued by the Commission. Hence, there is no significant case law on this subject. However in developed countries, the law is quite clear."

"In this regard, I am citing the extract from Criminal Justice Act, 1993 on defenses in an action for Insider Trading as follows:-

53. Defences:

(1) An individual is not guilty of Insider Dealing by virtue of dealing in Securities if he shows-

(a) That he did not at the time expected dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities, or

(b) That at the time he believed on reasonable grounds that the information had

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been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information, or

(c) That he would have done what he did even if he had not had the information.

From Para (b) above, it must be noted that CYAN as well as I had in good faith, relied on disclosures widely made in the Presentations and Financial Statements and honestly believed that nobody would be prejudiced by the sale of the shares of DAWH. Furthermore, CYAN in any case would have sold the shares of DAWH as it had been doing so over the last one and a half year, regardless of the financial position of DAWH or the profits earned or losses sustained by DAWH or the EPS of DAWH or the market price of DAWH. Para (c) above, clearly exempts such situations from the implications of Insider Trading. Hence, the decline in EPS of DAWH or its fall in the market price of its shares had no nexus with the earlier decision of CYAN to offload the shares of DAWH taken almost two years ago. Therefore, how CYAN or I or any other director or officer of CYAN can be preceded for alleged Insider Trading? "

"I am also quoting extract of Directive 203/6/EC of the European Parliament and the Council dated January 28, 2003 on Insider Trading and Market Manipulation, as follows:-

(30) Since the acquisition or disposal of financial instruments necessary involves a prior decision to acquire or dispose of taken by the persons who undertakes one or other of these operations, the carrying out of this acquisition or disposal should not be deemed in itself to constitute the use of inside information."

"It must be appreciated that in the instant case, the disposal of the shares of DAWH during the period was the implementation of a prior decision taken eighteen months ago and was not motivated by any inside information and neither was I privy to any inside information for the period between May 8, 2012 to July 26, 2012 for reasons already mentioned above. Hence, the essence of the principle of Insider Trading seems to have been misconstrued at the Commission's end."

"There are many factual discrepancies in the data indicated in your Show Cause Notice which we feel has created confusion and misunderstanding at the Commission's end as detailed under:

(i) The company has sold 4,618,515 shares at the average price of Rs.83.34

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per share during 2011 only rather 2,904,008 at the average rate of Rs.47.53 per share from January 01, 2008 to April 30, 2012 (Annexure XI), which was very much in compliance with the decision of its Board of Directors made on October 23, 2010 and the BRP recommended by the BOD on January 27, 2011 duly approved by the shareholder on March 10, 2011 in EOGM."

"(ii) You have indicated that CYAN's trading volume in DAWH shares was 48% from May 08, 2012 till July 26, 2012, which is not correct. The total volume traded in DAWH shares during this period was 18,995,650 whereas CYAN's volume traded was 5,392,372 (as against 5,391,872 wrongly quoted by you) which is again 28.4% rather than 48% (Annexure-XII). Please acknowledge that the shares of DAWH during the aforementioned period were disposed off on availability of ready buyers for the scrip as it is not an actively traded scrip. We cannot force anyone to buy the shares and all the trades were executed on KATs terminal without any information of the buyers. "

"Your allegation of CYAN Selling DAWH shares prior to announcement of financial results that resulted in decrease in share price from Rs.44.38 to Rs.29.21 based on statistics provided by you is also incorrect, because it was an independent decision for CYAN and was to comply with its approved investment policy of maintaining 40% of the total portfolio in cash/mutual funds which was at 24 % on May 01, 2012 which was increased to 29% on May 31, 2012 and 39% on June 08, 2012. However after the acquisition of HUBC shares to the amount of Rs. 1 billion the cash position went down to 10% which again increased to 20% on June 30, 2012, but had nothing to do with any group concerns or family members of the sponsors including myself."

"Further, you may note that during the aforesaid period, I did not dispose off a single share of my own or that of my family holdings/group holdings (Annexure XIII), as detailed under:

<i>Family ownership</i>	<i>48,496,478</i>
<i>Associated Concerns other than CYAN Limited</i>	<i>97,188,008</i>
<i>Total</i>	<i>145,684,486</i>

From the above information, you can easily assess that the Group lost more than Rs.2.2 billion in value terms of existing holding but they did not intervene, as the decision was made independently by CYAN as a portfolio investment company in compliance with decision of its Board of Directors and Shareholders. This clearly reflects the ethical and



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independent investment decision being implemented at CYAN without any interference or influence from common directors and/ or sponsors."

"In view of the position enunciated above, I would request you to kindly discharge the Show Cause Notice, which is evidently based on misconception of the legal and factual position and is tarnishing the years old goodwill, image and reputation of the HD Group as well as my personal image and reputation as a professional entrepreneur. The allegation of Insider Trading is so serious that I can be equated with staunch criminal in the corporate, business and financial circles, not only in Pakistan but also globally. I therefore hope you comprehend the gravity of the allegation and the extent of damage that it is likely to cause to me personally as well as to the entire HD Group, for which there is no justification whatsoever. "

"I look forward to receiving your confirmation of having dropped the charges against me as I am very much concerned over the seriousness of this matter and I reserve all my remedies and recourses under the law. "

9. The hearing in the matter was held on November 19, 2012. 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. The additional submissions made by them during the course of hearing and proceedings of the hearing are summarized as under:

i) COO apprised that he joined the Central Insurance Company Limited ("CICL") in year 2010 when the management of the CYAN decided to switch its business from insurance to investment management and private equity. He contended that in year 2010 the CYAN had around 3.5 million shares of DAWH. After the announcement of bonus shares of 300% by DAWH in 2011 the additional 10 million shares of DAWH were added to the portfolio of CYAN. The COO mentioned that the sale of DAWH shares in year 2012 was not a one time sale but the CYAN was selling the shares of DAWH since 2010.

ii) During the course of hearing COO was inquired

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regarding the investment committee of the CYAN and any authority given to him for making investment in different scrips on behalf of the CYAN. The COO informed that investment committee ("IC") was formed in September 2012 and before that investment decisions were taken by him. He further informed that BOD of the CYAN had authorized him to invest on behalf of it and he had made a gain of around Rs. 1.7 billion from January 2012 to September 2012.

iii) The COO informed that prior to constitution of IC any decision regarding investment in shares amounting to Rs. 200 million or more was taken after the approval of the BOD of CYAN. After the formation of IC in September 2012, which consists of the Respondent, COO and CFO, all the investment decisions are taken by the IC.

iv) COO was inquired that the Respondent also has the authority on Account Opening Form of the CYAN with FSL to operate its trading account. The COO explained that both of them have power of attorney to operate the account but usually he operates the trading account as the Respondent has various other engagements.

v) The COO was apprised that Insider Trading is white collar crime and now it is covered under civil law. The focal point in this particular insider trading case was the inside information regarding the working and performance of the DAWH which was discussed at length in the BOD meetings of DAWH held on April 25, 2012 and on June 25, 2012. The minutes of the BOD meetings were shared with COO at the time of hearing. The relevant points of the minutes of BOD meetings of DAWH, regarding adverse financial and operational condition of



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the company and possible results in next quarters, are reproduced here as under:-

BOD Meeting held on April 25, 2012

"Chief Financial Officer Mr. Aleem Amir ("AA") presented cash flows of DHFL under various scenarios during the remaining period of the financial year under the gas curtailment/shut down situations, Following is the summary:-

	Plan (Scenario 1)	Plan (Scenario 2)	Plan (Scenario 3)	Plan (Scenario 4)
Assumption	Actual Q1 & 9 month budgeted	Actual Q1 & 50% April to Aug & bal budgeted	Actual Q1 & 9 months @ 50%	Actual Q1 and no gas till DEC
Product (tons)	230,200	186,453	140,633	43,510
Sales (tones)	230,200	186,452	140,633	57,786
<i>Rupees in million</i>				
Opening Cash & Bank	1,121	1,121	1,121	1,121
Inflows	13,396	11,973	10,142	7,029
outflows	(11,615)	(10,632)	(9,663)	(7,823)
Dividend Payment to holding company	(700)	(700)	(700)	-
Net effect of HUBCO transactions	(960)	(960)	(960)	(960)
Net Cash & Bank balances	1,242	622	(60)	(633)

AA commented that in the current situation where there is no gas for the fertilizer industry, the weather is getting worse, management should plan to



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cope up with the situation keeping in view that there will be loss in 2nd and 3rd Quarters.

AA informed that we have in the scenario 4 factored in all elements and also there will be no dividend outflow from DHFL. He further informed that at holding company level there will be an overdraft position in the 2nd and 3rd Quarters which will be settled in the 4th Quarter after receipt of projected dividend from Engro and Hubco."

BOD Meeting held on June 25, 2012

" it was explained to them that this is survival situation and all staff have to work to assiduously contain cost. He further explained that if we are provided with 30 days of gas in 2012 we have a likely survive till end 2012 and if we are provided with 60 days of gas in 2012, we have a likely chance of surviving up to the first quarter of 2013....."

vi) After reading the minutes of the meetings, COO admitted that the Respondent may be privy to the inside information regarding financial and operational condition of DAWH because he is a non-executive Director of the DAWH but if he had the knowledge about the results of the DAWH then the Respondent should have sold his own holding and family holding of DAWH first before selling the shares by CYAN but he did not sell any personal holding of DAWH.

vii) The COO contended that Dawood group is having a crisis and earnings of its associated companies decreased due to the gas shortage and current economic condition but the members of Dawood group did not disclose any material information regarding the operation of the DAWH to any other person. The BOD of DAWH is very professional and they did not hide any public information which was material in nature. The COO argued that



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the shares of DAWH were sold to buyers available in the market during the Period, no selling pressure was created and no lower circuit breakers were witnessed during the sale of shares by the CYAN. He further explained that the CYAN has the investment policy approved by its BOD earlier wherein 60% funds of the CYAN would be invested in shares and 40% in mutual funds. COO stated that the CYAN signed a deal on March 23, 2012 for buying the shares of Hub Power Company Limited at Rs. 31 shares which proved to be most successful deal of the year 2012 and there was no need of insider trading to CYAN because in Year 2012 every thing was going in its favor.

viii) At the end of the hearing the COO requested that Commission may kindly discharge the SCN along with the allegations which are evidently based on misconceptions of legal and factual ground and tarnishing the goodwill, image and reputation of Dawood group.

10. I have heard the arguments presented by the COO and CFO at length during the hearing. Additionally, I have perused the record and the written reply filed by the COO on behalf of the Respondent. Accordingly, my findings on the arguments and assertions made by the Respondent to the issues raised in the SCN are as follows:

a) The Respondent in its written reply and COO at the time of hearing stated that CYAN sold 4,618,515 shares of DAWH instead of 2,904,008 shares from January 01, 2008 to April 30, 2012 as mentioned in the SCN and during the Period the CYAN trading volume was 28% of the total traded shares of DAWH and not 48% as mentioned in the SCN. In this regard, the relevant record was reviewed again and it was noted that the quantity of 2,904,008 shares of DAWH as mentioned in SCN was only ready market trading by the CYAN in the scrip of DAWH. The CYAN sold 1.8 million shares of DAWH in year 2011 in Off Market and

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same were also taken into account while calculating the final quantity. Further, we agree with the CYAN contention that its traded volume constituted 28% of total traded volume during the Period which was erroneously stated in the SCN as 48% due to typographical error.

b) The COO during the hearing informed that the Respondent did not attend the BOD meeting held on April 25, 2012, however, the minutes of meeting are usually received by the members of BOD within two weeks of the meeting. From the said statement of COO it is clear that the Respondent had received the minutes of BOD meeting by May 8, 2012 i.e. the date when the CYAN again started to off load the shares of DAWH. The examination of minutes of the BOD meeting of DAWH held on April 25, 2012 reveals that the BOD was informed that *"in respect of the current situation where there is no gas for the fertilizer industry, the weather getting worse, management should plan to cope up with the situation keeping in view that there will be a prediction of loss in 2nd and 3rd quarters"*. Further, in the meeting BOD was presented four different scenarios wherein it was projected that if DAWH will not be able to get gas till December 2012 then the DAWH may suffer loss up to Rs. 633 million. Further, review of minutes of BOD meeting held on June 25, 2012 showed that the Respondent attended that meeting after which the CYAN off-loaded considerable number of shares.

c) The Respondent in its reply stated that Commission's letters dated September 13 and September 26, 2012 had gone astray because of the shifting of the office from 10th floor to 4th floor of Dawood Center Karachi. However, during the hearing the COO provided the copy of email dated November 08, 2012, addressed to BOD CYAN and Company Secretary of DAWH, wherein COO informed that the Commission has issued SCN to the CYAN on the basis of incorrect data. Through the said email the COO further informed that the CYAN had not received any letter from the Commission.

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d) The Respondent in its written reply and COO at the timing of hearing contended that all the shares of associated companies were sold according to the strict plans of BRP which was duly approved by the BOD of the CYAN. After reviewing the BRP it is clearly mentioned under the head of Human Resources that core team for investment decisions of the CYAN be comprised of CEO, COO and CIO whereas the CYAN formally formed the IC in September 2012 which was not in line with the BRP. The COO at the time of hearing informed that the Respondent did not take investment decisions because of his busy schedule and in absence of CIO and investment committee; the COO was the only person who was taking all the investment decisions of the CYAN and managing its portfolio. However, no documentary evidence was provided which could show that the Respondent had authorized the COO to take investment decisions independently. Therefore, without any documentary evidence or prove, the contention that the Respondent was not involved in the decisions of sale of shares of DAWH during the Period cannot be accepted. Further, review of BRP also showed that it laid down a broader policy for the CYAN to off load/readjust the investment portfolio in the scrip of DAWH and ENGRO, however, it did not lay down the policy regarding timeline and price for sale of the shares. It is agreed that the sale of shares of DAWH by the CYAN was part of the BRP, however, sale of shares during the Period cannot be attributed entirely to this BRP, particularly, keeping in view the fact that material information was available with the Respondent at the time of sale of these shares.

e) It was observed that during the period from January to April 2012 the CYAN only sold a nominal quantity of 85,493 shares of DAWH when the price of the scrip was around Rs. 42. However, after BOD meeting of DAWH held on April 25, 2012 CYAN again started selling shares of DAWH and sold 1,263,135 shares from April 25, 2012 to June

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25, 2012. Further, after BOD meeting held on June 25, 2012 CYAN aggressively sold shares of DAWH and sold 4,128,737 shares from June 26, 2012 to July 26, 2012. The CYAN continued selling of shares up till the announcement of financial results of DAWH for the half year ended June 2012 on July 31, 2012. The timing and quantity of the sale of shares during the period does indicate that same was done on the basis of inside information available to the Respondent.

f) The assumption of Respondent that Insider Trading law is relatively new and there are no significant case laws available on it is not true. It is pertinent to note here that over a period of time the Commission has taken numerous actions against the different persons and companies for indulging in Insider Trading and more than twenty four orders were issued by the Commission during the last 4 years wherein heavy penalties were imposed. The details of all these orders are available on the Commission's website.

g) The Respondent in its reply mentioned that decision to sell shares was in furtherance of ongoing implementation of decision made by BOD on October 23, 2010. In this regard, as stated above it is pertinent to mention here that no specific schedule was given in BRP regarding the sale of shares of associated companies and left to it to the discretion of Core Committee/Investment Committee, of which the Respondent was a member, to dispose of the shares of associated companies. We have reviewed the date - wise trading history of the CYAN with regard to the selling of DAWH shares in ready market for the year 2011 and 2012 which is as under:-



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Year - 2011

Sr. No.	DATE	SOLD_QTY	SOLD_RATE (Rs.)
1	3/14/2011	800,000	263.00
2	3/25/2011	78,000	76.02
3	3/28/2011	73,000	74.17
4	5/26/2011	500,000	65.00
5	12/28/2011	1,668,000	40.62
6	12/29/2011	658,450	42.30
7	12/30/2011	841,065	41.68
		4,618,515	

Year - 2012

Sr. No.	DATE	SOLD_QTY	SOLD_RATE (Rs.)
1	1/2/2012	84,343	41.29
2	1/24/2012	1,150	42.50
3	5/8/2012	195,752	40.40
4	5/10/2012	500,000	41.90
5	6/18/2012	175,678	36.38
6	6/19/2012	70,000	35.66
7	6/21/2012	15,470	35.56
8	6/22/2012	234,235	35.39
9	6/25/2012	72,000	34.83
10	6/26/2012	16,500	34.29
11	6/27/2012	125,970	34.08
12	6/28/2012	52,500	33.94
13	6/29/2012	87,400	33.47
14	7/2/2012	202,037	33.32
15	7/3/2012	476,007	32.99
16	7/4/2012	30,000	32.84
17	7/5/2012	598,650	33.15
18	7/6/2012	320,214	32.83
19	7/9/2012	115,844	32.48
20	7/10/2012	152,926	32.16
21	7/12/2012	169,500	31.94
22	7/17/2012	98,189	31.30

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23	7/18/2012	201,500	31.13
24	7/19/2012	1,211,500	31.40
25	7/25/2012	250,000	30.41
26	7/26/2012	20,000	30.25
27	10/4/2012	309,000	38.00
28	11/5/2012	700,000	35.86
		6,486,365	* Transactions during the Period.

(h) The contention of the Respondent that disposal of shares of DAWH during the Period was implementation of prior decision taken eighteen months ago is not tenable. The timing of the transactions by the CYAN creates serious doubts about independency of their decision to sell the shares. It is evident from the historical trading data as mentioned in the para (g) above, the CYAN sold considerable quantity of shares of DAWH during the Period as compared to year 2011 and first quarter of 2012. It is important to note that the CYAN sold 83% of shares i.e. 5,391,872 shares during the Period as compared to total 6,486,365 shares sold in the year 2012. In the month of June 2012 the CYAN sold 3,846,367 shares of DAWH which is 59.30% of total shares sold by CYAN in year 2012 and 71% of total shares sold by it during the Period. CYAN sold DAWH shares in the month of July 2012 so aggressively that it even sold 270,000 shares in the closed period which is prohibited under the law and separate proceedings have been initiated against it for that violation.

(i) The Respondent in its written reply stated that Section 15 of the Ordinance prohibits a person from gaining an advantage out of price sensitive information which comes to his knowledge and which has not been made public but this section cannot applied on the sale of shares of DAWH by the CYAN because the decision of selling the shares of DAWH already made far back in October 2010. Further, the Respondent stated that there has to be a



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calculated motive and *mens rea* in any sale or purchase transactions. The interpretation of the section 15 of the Ordinance by the Respondent is not correct. The said section does not state that the inside information includes only that information that should be disclosed to the general public. It is pertinent to mention here that section 15 (B) (a) of the Ordinance is worded to cover wide range of information that may relate to listed securities which is not in public domain and is price sensitive in nature. Moreover, it is not necessary that penalty should be confined only to willful acts of omission and commission in contravention of the provisions of the enactment. For proper enforcement of provisions of Law, it is common knowledge that absolute liability is imposed and the acts without *mens rea* are made punishable. The notion that a penalty or a punishment cannot be cast in the form of an absolute or no fault liability but must be preceded by *mens rea* must be rejected. The classical view that "no *mens rea*, no crime" has long ago been eroded especially regarding economic crimes. I am of a view that the Ordinance is intended to regulate the securities market and the related aspects, the imposition of penalty, in the given facts and circumstances of the case, cannot be tested on the ground of "no *mens rea*, no penalty". For breaches of provisions of Ordinance and secondary legislation made thereunder, which are civil in nature, *mens rea* is not essential.

(J) On review of the arguments made both in written and verbal form, it is noted that the COO has admitted to a number of points, which were raised in the SCN. The COO accepted that the Respondent had access to inside information with respect to DAWH, even so, he did not disclose any inside information to him and that the decision to sell the shares of DAWH made on the basis of BRP approved by the BOD in its meeting held on January 27, 2011.



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11. Based on the contentions submitted in the written reply and the arguments made by the COO on behalf of Respondent during the course of hearing and in written reply it is abundantly clear that the Respondent, by virtue of his position at both the CYAN and DAWH was in possession of material inside information regarding the financial and operation condition of DAWH. An open ended decision taken by BOD of the CYAN to sell shares of DAWH for portfolio reallocation in October 2010 cannot substantiate the sale of shares by the CYAN in mid of the year 2012 just prior to announcement of financial results. As stated in the SCN, the Respondent falls under the definition of Insider as defined under section 15 C(1) (a) of the Ordinance as he was serving as CEO of the CYAN and non-executive director of the DAWH. It is imperative to note that, in BOD meeting of DAWH held on April 25, 2012 a working note on impairment loss on investment and performance of the DAWH and subsidiary company were discussed in detail and four different scenarios were presented to cope the difficult financial position of the Company. Similarly, in the BOD meeting of DAWH held on June 25, 2012 deteriorating state of affairs of DAWH were discussed in detail.

12. Potentially, the directors of any Company are first source of inside information. However, the person in possession of inside and confidential information must take proper care and caution so that this confidentiality is neither compromised nor breached. It would be appropriate to suggest that person in possession of inside information holds that information as a trust. It is clearly evident in the instant case that being on the BOD of the DAWH, the Respondent was directly privy to the inside information regarding worsening operational condition as well as weakening financial position of the DAWH and considering the financial position of the DAWH, the CYAN sold shares of DAWH aggressively during the Period.

13. From the above, it is established that the three components of Section 15 of the Ordinance i.e. insider, inside information and insider trading are present in the case in question. In the instant matter, the Respondent was the insider as he possesses the insider information regarding the deteriorating financial and operating position of DAWH and financial results was inside information and the selling of shares of DAWH by the CYAN on the basis of insider information just days before the announcement of financial result of the

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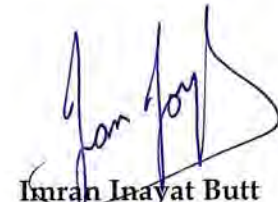
DAWH constituted inside trading the Respondent being privy to the inside information by virtue of his position at DAWH disclosed aforesaid inside information to the CAYN on the basis of which CYAN sold the shares of DAWH before dissemination of material nonpublic information and this fact is clearly evident from the trading pattern and timing of the transactions.

14. In light of the above, I am of the view that the Respondent being an insider under Section 15(A), of the Ordinance disclosed the inside information defined in Section 15 (B) relating to financial results of DAWH to CYAN which he possessed by virtue of his position in DAWH; hence he is liable for penalty as defined in the Section 15E(1) of the Ordinance., I hereby direct the Respondent to deposit a fine of Rs. 1,000,000 (Rupees One Million Only).

15. The matter is disposed of in the above manner and the Respondent is directed to deposit the fine as mentioned in paragraph 14 above, 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 the copy of the deposit challan to the undersigned.

16. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with law on matters subsequently investigated or otherwise brought to the knowledge of the Commission or on the same facts for violation of any other provision of the Ordinance.




Imran Inayat Butt
Director / HOD (MSRD)

Announced on April 19, 2013
Islamabad.