



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

Before The Director (Securities Market Division)

in the matter of Show Cause Notice issued to

Mr. Muhammad Sarwer, Director, Pattoki Sugar Mills Limited,

under Section 15 (A) of the Securities and Exchange Ordinance, 1969

Date of hearings:

September 20, October 19, and October 29, 2010

Present at the hearings:

Representing Mr. Muhammad Sarwer

(i) *Mr. Hammad Raza Zaidi*

Consultant

Assisting the Director (SMD)

(i) *Mr. Syed Asad Haider*

Joint Director

(ii) *Ms. Tayyaba Nisar*

Assistant Director

(iii) *Mr. Umair Zahid*

Assistant Director

ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice dated August 10, 2010 (“SCN”) issued by the Securities and Exchange Commission of Pakistan (“the Commission”) under Section 15A of the Securities and Exchange Ordinance, 1969 (“Ordinance”) to Mr. Muhammad Sarwer (“the Respondent”), who is a Director of Pattoki Sugar Mills Limited (“PSML”).
2. The brief facts of the case are that Baba Farid Sugar Mills Limited (“BAFS”) is a public limited company listed at the Karachi Stock Exchange (Guarantee) Limited (“KSE”). On



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the perusal of KSE trading data from March 19, 2010 to April 05, 2010 (“the Review Period”), it was observed that the price of BAFS shares (the “Scrip”) witnessed a sudden surge and increased from Rs. 5.50 to Rs. 16.44 with a very low volume.

3. Furthermore, the detailed analysis of the trading data of also revealed that the Respondent had placed various purchase orders in the Scrip during the Review Period through its trading account maintained with Foundation Securities (Pvt) Limited, Member KSE. The statistics revealed that the percentage of the queued orders placed by the Respondent constituted approximately 37% of the total queued purchase orders placed in the Scrip during the Review Period. However, the purchase orders placed by the Respondent from March 30, 2010 to April 05, 2010 remained unexecuted. The details of the orders placed by the Respondent in the Scrip are as follows:

Table 1

	All Orders	Queued Orders	Executed Orders
March 19, 2010 - March 29, 2010	62,801	12,301	7,593
March 30, 2010 - April 05, 2010	199,500	84,500	0
TOTAL	262,301	96,801	7,593

It is pertinent to mention that all the purchase orders for the Scrip placed by the Respondent, except one order, during the Review Period were placed at the upper circuit breakers, which contributed positively towards the price rise thereof. Moreover, the trades executed by the Respondent for purchasing 7,593 shares, at an average price of Rs. 9.76, comprised 55.05% of the total traded volume during the Review Period.

4. It was also observed that during the Review Period the share price of the Scrip rose from Rs. 5.50 to Rs. 16.44 , registering an increase of 198.91%, during consecutive eleven trading sessions. In retrospect, the Scrip is very thinly traded at KSE. This fact is obvious from a floating glance over the table below stating the trading history of the Scrip for the last three years:



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Table 2

	Volume (in Shares)	High Price (Rs)	Low Price (Rs)
2007	24,000	10.50	8.00
2008	6,500	9.50	8.50
2009	27,793	10.00	2.00
January 01, 2010 – April 05, 2010	140,256	16.50	4.00

5. At this juncture it is important to state related facts of the trading by the Respondent in the Scrip. On April 2 and April 5, 2010, KSE disseminated two notices respectively. First notice was from Infinite Securities Limited, manager to the public offer of BAFS shares and the second notice was issued by BAFS indicating that PSML, an unlisted company, whereby had expressed its intention to acquire 7.4 million shares (78.8% of the total capital) of BAFS.
6. It is reiterated that upon examination of the trading data of KSE it was noted that prior to the above information being disseminated by KSE to general public, the price of the Scrip had registered a sharp increase and the Respondent had significantly traded in the Scrip during this time. This prompted the Commission to inquire into the circumstances leading to rise in the price of the Scrip. Accordingly, the perusal of Form – A of PSML revealed that the Respondent is a director of PSML and with a shareholding of 48,000 shares. Additionally, the Respondent is also a shareholder of Imporient Chemicals (Pvt) Limited, which holds 38% shares of PSML. Further scrutiny of the record of PSML evidenced the fact that the PSML is a family owned business, where Mr. Muhammad Aslam, who is the Chief Executive Officer and major shareholder of PSML, is brother of the Respondent while another main shareholder of PSML, Mrs. Naheed Roohi, is the wife of Mr. Muhammad Aslam and sister in law of the Respondent.
7. The above information warranted a further analysis of the matter. For this purpose, the minutes of PSML Board Meeting held on March 29, 2010 were obtained from PSML that had been called on March 19, 2010 to discuss single agenda item concerning future



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investment prospects of the PSML in sugar industry. The minutes of the Board meeting disclosed that the Board had resolved to acquire the majority shares of BAFS. As a director of the Board, the Respondent had attended the meeting.

8. In view of the above facts, it was *prima facie* established that the trading by Respondent in the Scrip prior to the public announcement by PSML of its intention to acquire shares of BAFS was whilst being privy to 'price sensitive inside information' as being director of PSML. Since the aforementioned trading in the Scrip by the Respondent was in apparent violation of Section 15A of the Ordinance, the SCN was issued to the Respondent to show cause as to why action may not be taken against him under Section 15E of the Ordinance.
9. The Respondent, through Mr. Hammad Raza Zaidi, of Revenue Advisory Services, ("**the Representative**") submitted a written reply to the SCN which was received on September 14, 2010. The contentions made in the written reply are summarized as under:
 - a. *The Respondent bought 7,593 shares of BAFS at an average trade price of Rs. 10.58 during the Review Period from March 19, 2010 to March 29, 2010. The purchased percentage of the shares is 0.1% as compared to the total paid-up capital of the scrip, hence is a very insignificant quantity, which is unlikely to cast an impact on the share price of the scrip even purchased at upper circuit breaker.*
 - b. *The Respondent has total executed quantity of 7,593 shares which is a trivial percentage when compared to the total purchase orders placed by the Respondent in BAFS during the Review Period. Hence, it does not make any impact on the share price of BAFS.*
 - c. *The share price of BAFS touched Rs. 53 as of July 30, 2010. As per SCN, the share price rose as Inside Information prevailed in the market regarding the acquisition of BAFS by PSML. Consequent to this point mentioned in the SCN it is not possible for the Respondent to purchase the shares at upper circuit breaker and increase the share price, eventually causing loss to his own organization (PSML), which is going to*



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acquire BAFS.

d. As per Section 15 B (1) (a) of the Ordinance, "Information which has not been made public relating directly or indirectly, to listed securities or one or more issuers and which, if it were made public, would be likely to have an effect on the prices of those listed securities or on the price of related securities". In purview of the regulation, the Respondent didn't make any public announcement regarding the intention of PSML to acquire BAFS. However, the same was disseminated by the KSE through notices published at its website, firstly, by Infinite Securities (manager to the offer) dated April 02, 2010 and secondly, by BAFS dated April 05, 2010.

e. In light of the provisions of Sections 15 A, the Respondent has not involved in any insider trading, or engaged in using the Insider Information, hence the allegation placed through SCN are null and void.

10. The first hearing on the SCN was held on September 20, 2010, the Representative appeared before me on behalf of the Respondent. The Representative was unable to explain the rationale behind the transactions executed by the Respondent in light of the provisions of Insider Trading raised in the SCN and requested for a subsequent date of hearing, which was acceded, and second hearing was scheduled on October 19, 2010.

11. On October 19, 2010, the Representative did not arrive at the given time and therefore, the hearing could not be held. The Representative again requested for another date of the hearing and accordingly, the hearing was adjourned till October 29, 2010.

12. Accordingly, the matter finally came up for hearing on October 29, 2010, which was attended by the Representative and made the following submissions:

a. The Representative informed that the Respondent is a high net worth individual. He looks after the affairs of the Imporiant Chemicals (Pvt) Limited as well as PSML. The gain incurred by the Respondent by trading in the shares of BAFS is very minimal and bears no significance as compared to his high net worth.



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- b. *The Representative submitted that the Respondent is an industrialist by profession and has no acquaintance with any securities market law.*
- c. *The Representative mentioned that the Respondent was advised to invest in the scrip of BAFS and being unaware of the legalities of the securities law he bought the shares of BAFS.*
- d. *The Representative admitted the mistake on the behalf of the Respondent and termed the act as unintentional. The Representative prayed that keeping in view the aforementioned contentions, the Commission may take a lenient view in this matter. He reiterated that the said violations were the result of ignorance, unawareness and without having any fraudulent intentions on Respondent's part and also assured that any such of violation shall not be repeated in future.*
13. I have perused the record, the written reply filed by the Respondent and heard the arguments raised by the Representative during course of hearing. Accordingly, my findings on the issues enshrined in the SCN and the response thereto is as follows:
- a. The contention of the Representative that an insignificant quantity of the shares were purchased by the Respondent which is not liable to cast an affect on the price surge of the share is not correct. It is evident that BAFS is a thinly-traded scrip, and the trades executed by the Respondent comprised 55.50% of the total traded quantity in the Scrip during the Review Period. The transactions executed by the Respondent resulted in the continuous price surge. The share price escalated from Rs. 5.50 to Rs. 16.44 in eleven trading sessions. Hence, it clearly transpires that the trades executed by the Respondent had significant influence over the share price. It is noteworthy that trading history of the Respondent indicates that he never traded in the Scrip prior to the Review Period. Hence, the fact can not be ignored that Respondent specifically traded in the scrip when decision of acquisition of BAFS by PSML was under consideration and the transactions executed by the Respondent, whilst being privy to price sensitive inside information considerably contributed over the price appreciation of the Scrip. As stated earlier in the preceding paragraph number 3 of this order, the purchase orders placed by the Respondent contributed to approximately 37% of the total purchase orders. This is a



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significant quantity when compared to the free float of the BAFS, which is 264,105 shares only. Hence, it is apparent that the Respondent strived to obtain far more shares than he actually managed to purchase, by placing the purchase orders at higher rates but was not successful in obtaining the shares. Moreover, this also firmly establishes that the Respondent already possessed inside information which led to the placement of such massive orders in an inactive scrip for which the Respondent possessed no trading history.

- b. The contention made by the Representative that the Respondent is a high net worth individual and such meager gains would be of no worth to him, is not tenable. To constitute an offence under Section 15 A of the Ordinance, the quantum of 'gain made or 'loss avoided' is immaterial. The very fact that the Respondent has taken the lack of gain as a defense is actually admission to the commission of offence of 'Insider Trading' captured under Section 15 E of the Ordinance. Moreover, had the Respondent been able to execute all the purchase orders placed by him during the Review Period, the potential gain would have been manifold, keeping in view the consistent increase in the share price of the scrip.
- c. The contention of the Representative regarding the lack of knowledge about the securities law is unacceptable. It is a well established principle of law enshrined in the Latin maxim of '*Ignorantia Juris Neminum Excusat*' (Ignorance of law is no excuse). This principle has been upheld by jurisprudence by the Courts of Pakistan (Reliance is placed on **Akbar vs. Muhammad Aslam, 2005 YLR 221, Lahore High Court**). The Account Opening Form of the Respondent with the brokerage house indicates that he has been trading in the stock market since January, 2009, which establishes that the Respondent is not naïve market player and is familiar with the legal regulatory framework. Even otherwise, the Respondent being an experienced businessperson and a director in a public company ought to possess basic knowledge of law relating to Insider Trading while investing in capital markets. However, the assurance provided by the Representative on the behalf the Respondent is appreciated but cannot absolve the Respondent of liability under law.



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14. The two essential ingredients of establishing an offence of insider trading are that the person dealing in a scrip should be an 'insider' as defined in Section 15 C of the Ordinance and the information used by him/her must fulfill the criteria laid down in Section 15 B of the Ordinance. As for the first ingredient, it is transpired from the facts of this case that the Respondent being the director of PSML and one of the major shareholder of sister concern of PSML (Imporient Chemicals (Pvt) Limited) possesses a significant status/ authority in this family owned business concern. He was fully aware of the future business plans of PSML as substantiated through the agenda item and the decision taken in the respective board meeting regarding the investment plans of PSML in BAFS. The Respondent being privy to the insider information by virtue of its influential position in PSML was able to utilize this information resulting in the purchase of shares at lower market price to make a gain. From the facts of the case above, it is fully established that the Respondent falls under the category of an 'Insider' as defined in Section 15 C (1) (g) of the Ordinance which is reproduced as under:

"Insiders (1)- Insiders shall include

(g) any person obtaining inside information as part of his employment or when discharging his usual duties in an official capacity, or in any other way relating to work performed under contract of employment "

15. As for the second ingredient of insider trading offence under the Ordinance, the plain reading of Section 15B (1) (a) of the Ordinance makes it apparent that inside information should be non-public, price-sensitive information which directly or indirectly relates to the listed company. Accordingly, the information regarding acquisition of BAFS by PSML was material inside information, whose revelation to the general public has led the positive trend in the price as well as volume of the Scrip, therefore, is price sensitive.
16. Based on the concentration in the trading activity of the Respondent in the Scrip just before the disclosure of material information to general public, it is established that the Respondent, being an Insider, traded on the basis of Inside Information available to him owing to his official capacity as director of PSML, and hence has contravened with the provisions of Section 15A (2) (a) of the Ordinance which is reproduced as under:



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“an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals”

17. I am of the considered view that unfair trading practices damage market integrity and efficiency. It is unjust for a scrip to be traded publically when someone has private information which, if it were publically available, would reasonably effect the price of the scrip while other market participants are ignorant of that information. Thus, Insider Trading is a grave offence and can damage investor’s confidence and lead to exit of stakeholders from the market resulting in adverse consequences for the capital market.
18. In light of the above, in exercise of the powers under Section 15E (1) of the Ordinance, I hereby impose on the Respondent a penalty of Rs. 200,000/- (Rupees Two Hundred Thousand Only) for the contravention of the provisions of sub-section (1) of the Section 15A. 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
19. The matter is disposed of in the above manner and the Respondent is directed to deposit the fine as mentioned in paragraph 18 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.
20. 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.


Imron Inayat Butt
Director

Securities Market Division

Announced on December 23, 2010

Islamabad.