



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Before The Director/HOD (Market Supervision & Capital Issues Department)

In the matter of Show Cause Notice No. Misc/MSW/SMD/1(5)2004/1461 dated 20/12/2011

issued to National Bank of Pakistan under Section 15E (3) of the Securities & Exchange Ordinance, 1969

Date of Hearing:

January 04, 2012

Present at Hearing:

Representing the Respondent

(i) *Mr. Amir Sattar*

*EVP (Finance & Control Division),
National Bank of Pakistan*

(ii) *Mr. Amir Shehzad*

*SVP (Capital Market Division),
National Bank of Pakistan*

Assisting the Director/HOD (MSCID)

(i) *Mr. Osman Syed*

Deputy Director, SECP

(ii) *Mr. Umair Zahid*

Assistant Director, SECP

ORDER

1. This Order shall dispose of the proceedings pertaining to the Show Cause Notice bearing No. Misc/MSW/SMD/1(5)2004/1461 dated December 20, 2011 (“**Notice**”) under Section 15(E) of the Securities and Exchange Ordinance, 1969 (“**Ordinance**”) served on M/s. National Bank of Pakistan (“**NBP**”)(“**Respondent**”) through its President.
2. The facts leading to this case are that, the Securities and Exchange Commission of Pakistan (“**Commission**”), while examining the Off Market trading data of the Karachi Stock Exchange (Guarantee) Limited (“**KSE**”) for October 18, 2011 observed that Xenel International



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("Xenel") sold 142 million shares of Hub Power Company Limited ("HUBCO") at Rs. 37 per share (Ex-Dividend); which was approximately equivalent to Rs. 40 per share on cum dividend basis (HUBCO announced 30% dividend per share). Out of 142 million shares sold by Xenel, 72.74 million shares were acquired by the NBP.

3. On examination and scrutiny of trading data of Karachi Automated Trading System of KSE, it was observed that during the period of October 10, 2011 to October 12, 2011 there were unusual heavy volumes in the scrip. During the said period, the daily average volume traded in the scrip was about 14.62 million shares, whereas in comparison in the preceding period i.e. September 05, 2011 to October 07, 2011, the daily average volume traded in HUBCO was only 1.451 million shares. The aforesaid examination further revealed that NBP sold 3,244,769 shares in the Ready Market at an average rate of Rs. 41.88 per share during the period of October 10, 2011 to October 12, 2011, just a few days prior to the divestment of 142 million HUBCO shares by Xenel. Accordingly, NBP made a gain of about Rs. 6,100,166/- (Rs. 1.88 per share on the sale of 3,244,769 shares) in the transactions detailed above. The price history of share of HUBCO from October 05, 2011 to October 18, 2011 is as follows:

TRADING DATE	TRADED VOLUME (Shares)	TRADED VALUE (Rs.)	OPEN PRICE (Rs.)	HIGH PRICE (Rs.)	LOW PRICE (Rs.)	CLOSE PRICE (Rs.)
10/5/2011	2,096,429	88,203,631	41.86	42.25	41.61	41.71
10/6/2011	1,155,524	48,106,854	41.71	41.9	41.35	41.52
10/7/2011	237,825	9,905,999	41.52	41.9	41.5	41.68
10/10/2011	12,961,402	556,686,797	41.68	43.76	42.36	42.57
10/11/2011	22,469,164	946,126,175	42.57	43.17	41.62	41.67
10/12/2011	8,435,425	355,449,170	41.67	42.25	41.81	42
10/13/2011	2,083,343	86,940,247	42	42.2	41.4	41.63
10/14/2011	7,699,265	311,226,146	41.63	41.49	40.02	40.2
10/17/2011	1,236,530	46,236,520	37.2	37.8	37.1	37.41
10/18/2011	3,227,655	120,961,101	37.41	37.8	37.16	37.25

4. The Commission, vide its letter No. Misc/MSW/SMD/1(5)2004/1455 dated November 04, 2011, requested NBP to provide a certified copy of the minutes of the meeting of the investment committee in which the decision with respect to purchase of HUBCO shares was approved. Further, NBP was also asked to provide the date on which the offer for the divestment of HUBCO shares by Xenel came to the notice of NBP.



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5. The NBP vide its letter No. Nil dated November 11, 2011, responded to the Commission's letter and the relevant extracts from the reply are reproduced as under:-

We purchased a total of 57.740 million shares of HUB CO at Rs 37/- per share for a total cost of Rs. 2,136,380,000. This investment is marked as "strategic".

Please note that rumors of a considerable size lot of HUB Power Company shares for sale had been going around for months; however, our preliminary interest was solicited in the first week of October.

Accordingly, we obtained internal equity investment committee approval on October 12, 2011 (certified copy of the approval is attached with this letter) and the transaction was executed on October 18, 2011. (Emphasis added)

6. *Prima facie*, it appeared that the information regarding disposal of Xenel's holding in the HUBCO was inside information in terms of section 15B(1)(a) of the Ordinance. On the basis of the aforesaid, it appeared that NBP disposed off its holding in HUBCO on the basis of that inside information, at higher rates on 11/10/2011 and 12/10/2011, with the intention to buy back the shares once the price become lower, following the floatation of 142 million HUBCO shares in the market.
7. In view of the above, the Notice was issued to the NBP under Section 15(E) of the Ordinance, directing NBP to explain within 10 days of the date of the Notice as to why appropriate action may not be taken against NBP under the law on the contravention the provisions of subsection (1) of section 15A of the Ordinance.
8. In response to the Notice, the NBP submitted its reply vide letter no. Nil dated 28/12/2011. The relevant submissions in the response are reproduced hereunder:
- "As highlighted in our previous letter, the information about such a possible large block trade in Hub Co had been circulating in the market for some time before the actual transaction took place. Therefore, attributing this to be private information only with NBP is incorrect."*
 - "It is important to note that even though we took internal approval of the trade on October 12, 2011, the deal was still not finalized till a day before October 18, 2011."*



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On October 17, 2011 we were informed by the selling brokers (Invisor Securities & AKD Securities) that the client has finally agreed to the price of Rs. 37 per share. We obtained beforehand internal approval from the Equity Investment Committee so as to facilitate quick settlement of the transaction in case the seller agreed to the price. This shows that till the 11th hour, it was not 100% sure that the transaction would go through."

- iii. "Due to the sheer size of the transaction, the advisor approached various financial institutions and continued negotiations with them like it did with NBP over last several months to find out about the appetite of investors to assess the possibility of a successful transaction, therefore it is not suffice to say that information about this transaction was known only to NBP and was "inside information".*
- iv. "It is also important to note that the broker did not ask or require any of the potential buyers to sign any "Non Disclosure Agreements" when this deal was shown. Thus, the information that there was a sizeable block of Hub Co shares was up for sale for some months was in public domain."*
- v. "NBP held 12,075,864 shares of Hub Co at the end of day on October 10, 2011 out of which the bank sold 3,184,839 shares on October 11 and 59,930 shares on October 12, 2011 leaving a balance of 8,831,095 shares of HUBCO in its portfolio. If NBP was involved in "insider trading" and was selling HUBCO to make gains with the expectation that when the block transaction of Hub Co will be executed, the price of the stock will be under pressure and will allow NBP to buy the stock at lower price, then why would NBP leave almost 9 million shares in its portfolio and not sell any more shares for 6 days after October 12 till the transaction was executed on October 18, 2011 even when the transaction was not 100% confirmed by the seller till October 17, 2011 and even when the average traded price of the stock remained in the range of Rs. 42.20 and 40.10 (Source: Bloomberg) on a cum dividend basis, where NBP could have booked additional gains."*
- vi. "Once the EIC had given its approval for purchase of HUBCO shares on October 12, 2011, NBP, in the best interest of the market and to avoid any impression that it is impacting the price of the stock in any way, decided not to trade in the stock till October 18, when the block trade was finally executed. This is clear evidence that*



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NBP in no way was thinking to take advantage of any sort due to any information that it might have regarding HUBCO.”

- vii. *“We had already identified HUBCO as a potential stock that can be sold to make capital gains. The idea to sell HUBCO shares before its book closure was to book the Rs. 3 per share as capital gain instead of dividend as price would have adjusted down by Rs. 3 per share post book closure due to the dividend factor.”*
- viii. *“It is very important to note here that Hub Co is definitely one of the most important holdings of NBP, however, booking capital gains by selling the stock does not at all mean that NBP decided to exit the stock. The fact that there are only a handful of stocks that offer value and are tradable, limits institutions ability to realize capital gains. Once gain is booked, we have been rebuilding our position in the stock in the last couple of months so that by the time HUBCO announces its next dividend, we can take advantage of that return.”*
9. The hearing in the matter was held on January 04, 2012 at Islamabad wherein Mr. Mr. Amir Sattar and Mr. Amir Shehzad, (“**Authorized Representatives**”) appeared on behalf of Respondent, before the undersigned and reiterated the same arguments which were submitted in the response to the Notice.
10. I have examined the facts, evidence and documents on record, in addition to written and verbal submissions made on behalf of the Respondent. My findings on the arguments and assertions made by the Respondent to the issues raised in the Notice are as follows:
- (i) The argument of the Authorized Representatives, that the transaction was not finalized till the eleventh hour, appears to have no justification. The internal approval of the transaction from the investment committee of NBP was taken on October 12, 2011, which seems illogical without the consent of the seller or his broker. Furthermore, the structuring of such outsized deals usually requires substantial time. NBP vide its letter dated November 11, 2011 has admitted that their preliminary interest with respect to off market transaction was solicited in the first week of October, 2011. Therefore, it is incorrect to suggest that deal was not finalized till the eleventh hour. It can be argued from perusal of the record that NBP had information regarding large transaction in the sale of shares by HUBCO,



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negotiations were going on during the first week of October 2011 and the deal was finalized by October 12, 2011 when the approval of the investment committee was obtained. Thereafter, the deal got materialized on October 18, 2011. However, nothing is on record to suggest that information regarding the date of materialization of deal i.e. October 18, 2011 was available with the Respondent before October 17, 2011 as argued by the Respondent.

- (ii) The contention of the Authorized Representatives that the information about such a possible large trade in HUBCO is not inside information since this information had been circulating in the market for some time before the actual transaction took place needs consideration. The Respondent substantiates this argument with a contention that the broker of the deal, i.e. Invisor Securities (Private) Limited, did not require any of the potential buyers to sign "Non-Disclosure Agreements" while offering the deal. The Authorized Representatives also contended that in September 2011, they had already identified HUBCO as a potential stock that could be sold to make capital gains and in support of this argument they also referred and submitted the minutes of the 6th meeting of Equity Investment Committee of NBP held on 6/9/2011, wherein few stocks including HUBCO were highlighted by the Equity Investment Committee, to be sold in the 3rd and 4th quarter of the year in order to book capital gains to meet the budgeted capital gain target of NBP. The arguments put forth by the Respondent have substance but on the other hand nothing has been brought on record to substantiate the averment that the information regarding the possible large trade in HUBCO was ever made public by Xenel. Similarly, no requirement of Non-Disclosure Agreement by the broker associated with the deal does not imply or lead to the conclusion that the price sensitive information associated directly or indirectly with a security is public information.
- (iii) On the appraisal of arguments the discussion boils down to the determination whether the information on the basis of which trading was conducted was inside information in terms of section 15 B of the Ordinance or not.
- (iv) It is apparent from the perusal of the record that NBP had information regarding the large trade in the shares of HUBCO. The trading in question is also established as per record. Without a doubt the information was price sensitive in nature but the argument



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of the Respondent that the information was generally available in market has some credence. The broker of the deal i.e. Invisor Securities (Pvt.) Limited was in contact with potential buyers regarding the sale of major chunk of shares of HUBCO. Further, nothing is brought on record to prove that the information regarding the time of the materialization of deal was generally available in the market or with the Respondent at the time of the transactions in question i.e transactions held on October 11 and October 12, 2011. From the perusal of the record it can be inferred that since the Respondent solicited approval of its Equity Investment Committee to purchase shares of HUBCO on October 12, 2011, the information regarding the time of the materialization of transaction was available with NBP. However, there is no material evidence on record to substantiate this inference.

- (v) Even for sake of argument if it is admitted that the said information was available with NBP on October 12, 2011, the major chunk of trading on October 11, 2011 may not be considered to be insider trading since it was not based on the inside information which is presumed to be available on October 12, 2011. Further in light of the submission of the Respondent that the cogent information regarding the materialization of the deal was received on October 17, 2011, which is not refuted by any material placed on record, the balance of probability is tilted in the favor of the Respondent.
- (vi) Having said that, the trading in the scrip of HUBCO by Respondent on 11/10/2011 and 12/10/2011 does not meet the standards of trading practices that is expected of major participant in the market, that created doubts and suspicions and resulted in initiation of proceedings by the Commission. The transactions were structured in way which gave impression of insider dealing. Such dubious trading patterns and timing of trades can lead to believe by the Regulator as interference in the fair and proper functioning of the market. The Respondent is a well-reputed and prestigious Bank of the country and high standards of conduct and compliance is expected of it.

11. In view of the foregoing, the Respondent is hereby reproached and censured for conduct which does not commensurate with high standards of comportment expected of the Respondent and is strictly warned to abstain from trading in future in such a questionable manner which creates suspicions and doubts of insider trading.



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12. This matter is disposed of in the above manner and the management of NBP is directed to ensure compliance of the laws in letter and spirit. The Respondent is further warned that any repetition of the same or similar conduct in future will be dealt with more severely.
13. 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.

(Imran Inayat Butt)
Director / HOD (MSCID)

Announced:
March 28, 2012
Islamabad.