



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Before The Director / HOD (MSCID)

In the matter of Show Cause Notice issued to Mr. Wasim Hyder Jalbani

Date of Hearing:

December 30, 2011

Present at the Hearing:

(i) Mr. Wasim Hyder Jalbani

*Ex-Fund Manager,
JS Investment Limited*

Assisting the Director / HOD (MSCID)

(i) Mr. Muhammad Ali

Deputy Director

(ii) Ms. Tayyaba

Assistant Director

ORDER

1. This order shall dispose of the proceedings initiated through Show Cause Notice bearing No.1(13)/INS/MSW/SMD/2010/JSIL/01 dated October 19, 2011 (“**SCN**”) issued by the Securities and Exchange Commission of Pakistan (“**Commission**”) under Section 15(A) of the Securities and Exchange Ordinance, 1969 (“**Ordinance**”) to Mr. Wasim Hyder Jalbani (“**Respondent**”), ex Fund Manager of JS Investment Limited (“**JSIL**”) and the funds under its management (“**the Funds**”).
2. The brief facts of the case are that an onsite inspection of JSIL and the funds under its management was ordered by the Commission vide Order No. SCD/SD/DCML/2010/272 dated July 23, 2010 under powers conferred upon in Section 282(I) of the Companies Ordinance, 1984. During the aforementioned inspection, the trading details for the employees of the Funds were reviewed, including the details of trading activity



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

undertaken by the Respondent's brother Mr. Shakeel Ahmed Jalbani ("SAJ") for the period covering January 01, 2009 to June 30, 2010 ("**Review Period**").

3. On perusal of the trading data of the Karachi Stock Exchange (Guarantee) Limited ("**KSE**") for the Review Period, it was observed that SAJ was an active market participant and carried out his trading activity through Standard Capital Securities (Pvt.) Limited ("**the Brokerage House**"). The trading activity of SAJ was reviewed in relation with the trading of the Funds.
4. The analysis of the trading data revealed that in most of the transactions made by SAJ, Funds were the counter parties. In this regard, four types of suspicious transactions were identified which were carried out by SAJ. Following are the details of those transactions:
 - a. Scrips were purchased from the market at lower rates and sold to the Funds at higher rates.
 - b. Scrips were sold in the market at higher rates and subsequently the same quantity was bought from the Funds at lower rates in order to square up the transactions.
 - c. Scrips were earlier purchased from the Funds at lower rates and subsequently sold in the market after increase in the rates.
 - d. Scrips were earlier purchased from the Funds and consequently partly sold to the Funds and rest in the market. Mostly, these transactions were squared on the same day.
5. Further, it was identified that major trading portion of SAJ was executed in correlation with the Funds wherein the timing of trades executed by SAJ was in close correlation with the trading of Funds. The suspicious trading by SAJ was observed in 21 different scrips which includes Attock Cement Pakistan Limited, Lucky Cement Limited, Pakistan Telecommunication Limited, Fauji Fertilizer Company Limited, DG Khan Cement Limited, Glaxo Smith Kline (Pak) Limited, Oil and Gas Development Company Limited, Faysal Bank Limited, United Bank Limited, Hub Power Company Limited, Honda Atlas Car Limited, Meezan Bank Limited, Pakistan State Oil Limited, National Bank of



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

Pakistan Limited, Pakistan Petroleum Limited, Pakistan Oilfield Limited, MCB Bank Limited, Agriaautos Industries Limited, Pak. Suzuki Motors Limited, Nishat Mills Limited and Engro Corporation Limited.

6. The details received from the Brokerage House revealed that SAJ had authorized the Respondent to operate his trading account on his behalf. Moreover, it was also noted that cheque number CD-1517950 of Bank Alfalah Limited (KSE Branch) dated December 07, 2009 amounting to Rs. 3.5 million issued by the Brokerage House in the name of SAJ was actually credited in the Respondent's bank account, maintained at Habib Metropolitan Bank Limited (Main Branch Karachi) on December 10, 2009 as the cheque was in format of "&Co". Similarly another cheque of Rs. 735,000/- of JS Bank Limited was issued by the Brokerage House and credited in the bank account of SAJ maintained at United Bank Limited (Naushero Feroze Branch Sindh), however, after a few days later i.e. on July 19, 2010 the same amount was transferred online into the bank account of the Respondent.
7. From the scrutiny of available record, it was revealed that during the year 2009-2010, the Respondent held the position of Fund Manager and also remained part of the Investment Committee ("IC"). The Respondent was involved in the decision making process of investment / disinvestment of portfolios of the funds namely JS Islamic Fund, JS Capital Protected Fund IV, JS Value Fund and JS Aggressive Asset Allocation Fund and was privy to inside information pertaining to investment by the above-mentioned funds.
8. In light of the aforementioned, the SCN dated October 19, 2011 was issued to the Respondent to explain as to why action should not be taken against him under Section 15(A) of the Ordinance. The Respondent was asked to submit a written reply within seven days of the date of SCN and hearing was fixed on November 02, 2011 at Commission's Head Office Islamabad. In response to the SCN, the Respondent vide its letter dated October 31, 2011 requested for the extension of one month time for submission of the response to the SCN as well as hearing date, which was accepted in the interest of the justice.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

9. The Respondent vide letter dated November 26, 2011 submitted his response to the SCN.

The important contentions raised in the response are reproduced hereunder:

- i. *I have gathered some of the relevant information from SAJ but all the information was not available due to the fact that these transactions which the Commission has called into question, date back to nearly three years and record over that period is not available to him.*
- ii. *After carefully going through the information stated in the SCN and comparing it with the limited information which has been made available to me by SAJ it appeared that a misunderstanding has occurred on the Commission's part which has caused the SCN to issued to me.*
- iii. *I firmly and categorically deny that I have indulged in insider trading or breached the requirements of Section 15 (A) of the Ordinance or any other law.*
- iv. *SAJ has been an active investor in the KSE for last several years and has carried out this activity quite independently of me and in fact completely without reference to my self. I am unaware of the activities carried out by SAJ and it is completely unjustifiable on the Commission's part to attribute to me SAJ's trading activity, which is exclusive to him and was carried on by him independently of me and without reference to me. The Commission's attribute to my self of his transactions with the Funds is based upon conjectures, assumptions, and supposition and, therefore, it is again for that reason completely unwarranted and non- maintainable.*
- v. *SAJ is one of those many people doing business on the KSE who can*



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

be described as "day traders". He relies upon his investing acumen and reading of market conditions to buy stocks at low prices and selling them on high prices. Therefore, although the SCN only identifies his day trading activity in relation to the Funds during 1 January 2009 to 30 June 2010, there are a vast number of other stock transactions which he has conducted either as buyer or as seller during the same period, in which cases none of the Funds were his counterparties. Sadly, none of his other day trading activity has been brought on the record by the Commission.

- vi. *However, it is submitted that if the true profile of the high volume day trading activity of SAJ is correctly analyzed and it is seen that he has entered into transactions with both Funds and non-Funds as counterparties, then the true significance of his coincidental transactions with the Funds will be comprehended in the correct light. It will be understood that this coincidence is nothing unusual or irregular; but on the contrary it is a real and normal feature of day trading activity. In this view, it is completely unjustifiable for the Commission to use this simple matter of real coincidence and suppose something sinister or suspicious behind it. At the very least, it fails to discharge the Commission's burden of proving beyond reasonable doubt that I have been guilty of any offence.*
- vii. *I observe from the SCN that this profile of SAJ's trading activity is central to the allegation made against me in the SCN that I have used him as a front for my transactions with the Funds because I was on the Investment Committee of JSIL and therefore involved in the investment/divestment decision making process in relation to the Funds and therefore privy to such information. Once it is accepted that the profile of SAJ's transactions as presented by the SCN is misleading, it has to be accepted that the SCN central allegation is*



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

also deeply flawed and renders the SCN based on suppositions and misleading information. Again, this is not a valid basis of proof beyond reasonable doubt that I am guilty of the offences alleged against me by the SCN.

viii. *Furthermore, I submit that day trading is not SAJ's sole activity on the stock market. The appendices to the SCN themselves show transactions by SAJ in which he held bought shares over various periods before selling them, and that these holding periods ranged from periods of 45 minutes, to a few hours, to overnight holdings and to holdings over periods of up to, two weeks. It is completely incomprehensible as to how these transactions, which the Commission's own records show were investment transactions in nature, could be termed as trading in price sensitive information. Given that price discovery in our-stock market is completely and instantaneously transparent, this causes price sensitive information that has been exposed to the market for longer than a very short period to rapidly lose its price sensitivity. It is submitted that the fundamental test of price sensitive information not being satisfied in the case of SAJ's transactions which are essentially of investment nature causes the offence of insider trading not to be made out by the Commission. Therefore, the Show Cause Notice is liable to be withdrawn on this basis alone.*

ix. *I respectfully submit that decisions taken at the Investment Committee level in relation to Funds of which I was not a Fund Manager have no relevance whatsoever to me as I had no responsibility for, input into or control over the execution of such decisions. It is common practice in the funds management industry that decisions in relation to particular funds considered at the Investment Committee level are made collaboratively by the Chief*



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

Executive Officer, the Chief Investment Officer, the Head of Research and the specific Fund Manager concerned of those funds. On this measure, it will be seen that several of the transactions shown in the appendices to the Show Cause Notice concern Funds for which I was not the Fund Manager. Accordingly, such Funds must be excluded from all consideration in this case.

- x. *I respectfully submit that if the analysis described above is correctly and fairly applied, and all of SAJ's transactions which are genuinely of an investment nature and are not transactions based on price sensitive information are excluded from consideration, and further all of his transactions which pertain to Funds of which I was not the Fund Manager are also excluded, then we are left with only a small number of transactions in which it is only a real coincidence that an active day trader like SAJ would have entered into with Funds as counterparties for which I was the Fund Manager.*
- xi. *In relation to the cheque of Rs.3.5 million I submit that this transaction occurred because at the time the cheque was issued, SAJ was in his village in Sindh and he asked me to credit the money into my bank account as he would be coming to Karachi in a few days. Thus, it was nothing more than a simple loan transaction from him. In relation to the cheque for Rs.735,000 which was transferred online into my account, I submit that SAJ's payment to me of Rs.735,000 was repayment and satisfaction of a cash loan for that amount which I had earlier given to him.*
- xii. *I respectfully submit that pursuant to section 15B (1) (a) of the 1969 Ordinance, "inside information" relates to information pertaining to the economic fundamentals affecting listed securities or the issuers of such securities, and does not include information that a mutual*



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

fund proposes to buy or sell a listed security, which is the precise nature of the information that the Show Cause Notice alleges me of having used. It is respectfully submitted that using information that a mutual fund proposes to buy or sell a listed security before the public disclosure of such information (such activity is commonly known as "front running") is not covered within the ambit of section 15A. On the contrary, it is covered by Rule 4 of the Securities and Exchange Rules, 1971, and is only applicable to members of stock exchanges. Therefore, the Show Cause Notice is liable to be discharged on this ground alone as neither SAJ nor I are members of any stock exchange. For the reasons stated herein, I respectfully request the withdrawal of the SCN.

10. Subsequently, the hearing in the matter was held on December 30, 2011 at Commission's Karachi office which was personally attended by the Respondent. The Respondent at the time of hearing reiterated the contentions made in the written response. Further, he made the following verbal submissions:

- i. The Respondent stated that his brother SAJ is based in Nawabshah and he used to invest in the stock market. SAJ used to take advice from the Respondent regarding the investment in the stock market and often Respondent placed the buying and selling orders on behalf of SAJ in his trading account.*
- ii. The Respondent confirmed that he had the authority to operate the trading account of SAJ. He admitted that there is very close correlation between the transactions of SAJ and the Funds but that was mere co-incidence.*
- iii. The Respondent apprised that he joined JS ABAMCO Limited as portfolio Manager on August 07, 2001 and after serving nearly five*



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

years, he resigned and then was reappointed as Vice President at Investment Management Department at JSIL on September 29, 2007. The Respondent further informed that he was the Fund Manager of four different funds i.e. JS Value Fund, JS Islamic Fund, JS Capital Protection Fund and JS Aggressive Allocation Fund. Regarding the investment structure of the Funds, the Respondent stated that Fund Managers used to submit the investment recommendations based on the reports of research analyst to IC, which included Chairman, Chief Executive Officer, Company Secretary, Research Head and Fund Managers. IC used to take decisions regarding investment in the stock market and then the Fund Managers were responsible for placing orders in different scrips on behalf of the Funds. No Fund Manager was allowed to make any investment decision on his own.

- iv. The Respondent reiterated his stance that the decisions were made by IC, his role was to implement the decisions of IC and some times he placed orders on behalf of the Funds. Further, he informed that he was the part of IC and had the role in decision making and placing orders for JS Value Fund and JS Islamic Fund only but for JS Capital Protection Fund and JS Aggressive Allocation Fund, he was not the member of IC.
- v. The Respondent explained that the trading account of SAJ was opened before his reappointment at JSIL. Chief Investment Officer of JSIL knew about the account of SAJ. The JSIL has a policy for the employees but not for their relatives regarding the trading in the stock market. The Respondent informed that the JSIL did not inquire him about the trading by SAJ before the inspection by the Commission. The Respondent was inquired about his resignation from JSIL to which he replied that he was victimized and management of JSIL forcefully took the resignation from him.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

vi. *The Respondent asserted that SAJ used to invest in different scrips for short term and long term and trades matched with the JSIL Funds are just mere coincidence. The Respondent prayed that keeping in view the aforementioned contentions, the Commission may take a lenient view of the matter as the trades conducted in the accounts of SAJ were independent to him and he has nothing to do with them and he did not contravene the provisions of Section 15(A) of the Ordinance.*

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

- i. The contention made by Respondent that the limited information is available to him regarding the trading of SAJ and misunderstanding on the Commission's part which caused the SCN to issue is not true. In this regard, it is noted that all the trading information is taken from the KATS trading data of KSE, wherein most of the transactions made by SAJ, Funds were the counter parties. After analyzing the trading data of SAJ, four types of suspicious transactions were identified which were carried out by SAJ and he earned huge profit from these transactions which was subsequently materialized by the Respondent. The money trail of the proceeds of the transactions is undeniable.
- ii. The argument given by Respondent that SAJ was trading in the market independently and that he was unaware of his trading activities is untenable. It is evident from the facts that major trading portion of SAJ was executed in correlation with the Funds. Further, the timing of trades executed by SAJ was also in close correlation with that of the



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

Funds. The details received from the Brokerage House revealed that SAJ had authorized the Respondent to operate his trading account on his behalf and at the time of hearing the Respondent admitted that he used to place orders on his brother's behalf and was authorized to trade in his account. Moreover, it was also revealed that two different amounts were credited in the Respondent's bank account which pertains to SAJ trading account.

- iii. The Respondent in its written reply to the SCN and in its arguments during the hearing stated that SAJ was day trader and the Commission has only taken those transactions wherein the Funds were the counter party. After the detail analysis of trading activities it was revealed that SAJ opened its trading account on March 06, 2007 and executed his last trade on June 07, 2010. During this period, he bought 9,651,476 shares and sold 9,962,062 shares in 30 different scrips. During the Review Period i.e. January 01, 2009 to June 30, 2010, SAJ bought 8,754,026 shares and sold 8,959,612 shares in 21 different scrips which consist of almost 90% of his total trading. It is pertinent to mention here that if the contention of the Respondent is accepted to the extent that he was the Fund Manager of two funds i.e. JS Islamic Fund and JS Value Fund instead of four funds even then 14 scrips were identified out of 21 scrips wherein the above-mentioned two funds were the counterparty of the trading of SAJ. Following is the list of 14 scrips wherein SAJ earned profit of approximately Rs. 1.947 million.

Table -1

Sr. No.	Scrip Name	Profit Realized (Rs)
1	Attock Cement Pak Ltd	812,200
2	Lucky Cement Ltd	198,866
3	Pakistan Telecommunication Ltd	161,385
4	Fauji Fertilizer Company Ltd	258,489



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

5	DG Khan Cement	17,750
6	Oil and Gas Development Co. Ltd	70,071
7	Honda Atlas Car Ltd	101,324
8	Meezan Bank Ltd	97,681
9	Pakistan State Oil Ltd	75,022
10	Pakistan Petroleum Ltd	34,342
11	Pakistan Oil Fields Ltd	34,361
12	Agriautos Industries Ltd	37,500
13	Pak Suzuki Motors Ltd	26,818
14	Nishat Mills Ltd	21,518
Total		1,947,327

- iv. The Respondent also stated that trades in question were mere coincidence and nothing unusual or irregular occurred during the trading of SAJ. The trading pattern of SAJ clearly indicates that the Respondent had taken advantage of the confidential inside information pertaining to the investment decisions of the Funds by trading through the account of SAJ. It is important to note that in majority of the instances, the shares were either purchased from or disposed of to the Funds resulting in significant capital gain for SAJ which can by no stretch of imagination be termed as a matter of coincidence. The Respondent was involved in the decision making for day to day investments of the Funds and used to give buy and sell orders on behalf of the Funds and in most of the trades SAJ was the counter party. The Respondent was privy to price sensitive inside information and the trading from the account of SAJ and subsequent transfer of proceeds of the transactions to the bank account of the Respondent leaves no doubt in my mind that it was not a mere coincidence.
- v. In his written reply the Respondent contended that the allegation leveled on him does not attract the applicability of Section 15 of the Ordinance and such activity which is commonly known as "front running" is not covered within the ambit of Section 15A. The contention of the Respondent is not based on the facts because the



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

Respondent in year 2009-2010 held the position of Fund Manager and was also the part of the Investment Committee and involved in the decision making process of investment / disinvestment of portfolios of the Funds till May 21, 2010. In this regard the relevant provision of Section 15C of the Ordinance is reproduced as under:-

(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 or otherwise;

From the above, it is evident that since admittedly the Respondent was responsible for the decision making pertaining to day to day investments of the Funds, he was privy to inside information pertaining to investment by the Funds and thus was an insider in terms of Section 15C of the Ordinance.

- vi. The Respondent in its reply further contended that "inside information" relates to information pertaining to the economic fundamentals affecting listed securities or the issuers of such securities, and does not include information that a mutual fund proposes to buy or sell a listed security is not true. To determine this question it is crucial to replicate Section 15B (1) (a) of the Ordinance:

15 B. Inside information.-(1) The expression "inside information" means,-

- (a) 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;*

By a reading of the above sub-section, the argument of the Respondent that 'inside information' must relate directly to the issuer is confuted.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

The wording of the sub-section is un-ambiguous in explaining what constitutes of 'inside information'.

12. After a detailed and thorough perusal of facts, information and documents submitted by the Respondent and the contentions and averments made by the Respondent during the course of hearing, it is established that the Respondent being a Fund Manager and the Member of IC was privy to the inside information regarding investment by the Funds. The trading of SAJ mostly concentrated in those scrips in which the Funds traded while the Respondent was the Fund Manager. It is further established that the Respondent placed the orders of the Funds in such a manner that these ultimately matched with the orders of SAJ. The trading pattern of SAJ clearly indicates that the Respondent has taken advantage of the inside information pertaining to the investment decisions of the Funds by trading through the account of SAJ.
13. The Respondent was authorized by SAJ to operate his trading account. Moreover, it is also noted that the huge amount was credited in the bank account of the Respondent. The significant amount of profits in the trading account of SAJ and its trading pattern clearly indicates that the Respondent has used inside information pertaining to the investment decisions of the Funds and traded on the basis of inside information through the account of SAJ and earned significant profit.
14. In terms of section 15A(2)(a) an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains shall be deemed to have committed insider trading.
15. In view of foregoing, whilst giving due consideration to the prayer of the Respondent to take a lenient view, in exercise of powers under Section 15E(1) of the Ordinance, I hereby impose on the Respondent a fine of Rs. 2,500,000/- (Rupees Two Million and Five Hundred Thousand Only) for contravention of sub-section (1) of Section 15A of the Ordinance.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Market Supervision and Capital Issues Department)

16. This matter is disposed of in the above manner and the Respondent is directed to deposit the fine as mentioned in paragraph 15 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.
17. 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 on February 29, 2012
Islamabad.