

15th August, 2009

Mr. Salman Ali Shaikh,
Chairman,
Securities and Exchange Commission of Pakistan,
National Insurance Corporation Building,
Jinnah Avenue,
Islamabad-44000,

Fax No. (92-51) 9205692, 9204915

**Sub; SECP seeks to cover up mega scam
Article of Ansar Abbasi in NEWS 14th August 2009**

Dear Sir,

Transparency International Pakistan refer to the news published in Daily NEWS of 14th August (copy attached) , which contains a number of allegations on the non performance of SECP and illegal protection of violators of rules of SECP. The article also mentions about the efforts of SECP to change the rules to have provisions of plea bargaining incorporated in SECP mandates for benefiting big and resourceful businessmen.

TI Pakistan also reminds SECP that it is obligatory on SECP to take punitive action under Companies Ordinance, 1984 Article 282 K for companies violating its rules. Penalty for making false statement (imprisonment for a term which may extend to three years and shall also be liable to fine which shall be not less than one hundred thousand rupees), if the inquiry conducted by SCEP came across such a situation.

TI Pakistan is for the Rule of Law, and will continue its efforts to have Rule of Law implemented across the board, and ensure that in Pakistan **“Corruption becomes a low profit and high Risk Business”**.

The plea bargain provisions sought by SECP, as reported in the press report is a selective and discriminatory provision, which contradicts the Pakistan Constitutional provision under Article 25 **Equality of citizens, which says**” All citizens are equal before law and are entitled to equal protection of law”. It amounts to famous Urdu proverb **“ Riswaht Lay Kar Phas Gaya, Rishwat Dey Kar Chut Ja”**. This provisions also indicate that law is only for poor.

Transparency International Pakistan request the Chairman to kindly look into the following allegations made in the news report and confirm to TI Pakistan whether they are true of false;

1. SECP Chairman Salman Ali Shaikh when contacted denied that the purpose of the amendments sought is to cover up a mega fraud as concluded by the SECP's report submitted early this year. There was no action taken by the SECP against the companies involved in the stock exchange fraud.
2. Sources claim that the SECP, which has been delaying and concealing the alleged corruption of the corporate bigwigs so far, wants the SECP Act to be amended to authorise the Commission to indulge in plea bargaining, which in this case is particularly motivated by the desire to conceal the criminal conduct of some bigwigs and let them go scot-free.
3. "If the SECP starts to aid and abet white collar criminals as opposed to checking, deterring and prosecuting them then the public interest in honest regulation of our corporate sector will be seriously compromised," a source said. However, the chairman SECP insisted that the provision of plea bargain is being added to the SECP Act for the reason that such powers are enjoyed by regulators all over the world.
4. Documents reveal that the SECP chairman approached the finance minister and the then adviser to prime minister on finance Shaukat Tarin on June 4 seeking amendments in the SECP Act 1997. Besides other amendments, the SECP seeks the insertion of a new provision 38B dealing with plea bargain. The proposed provision reads as: "Plea Bargain - Notwithstanding anything contained in any other law, where at any time after the commencement of any enquiry, investigation, trial or during the pendency of an appeal, a person agrees to return the assets or gains acquired or made by him in the course, or as a consequence, of any offence under this Act or any law administered by the Commission, the Commission may in its discretion, after taking into consideration the facts and circumstances of the case, accept the offer on such terms and conditions as it may consider necessary, and shall where trial had commended refer the case for the approval of the court." Using this surveillance system, Securities Market Division of the SECP traced a classic case of market manipulation in the shares of a limited company where the price of shares of the company was artificially jacked up by majority owners of the same company with active assistance from a number of brokers. Those associated with these companies and broker houses are considered highly influential and well connected.
5. A detailed investigation by the SECP, which was completed early this year, confirmed that market had indeed been manipulated and a substantial loss had been caused to innocent investors. It is estimated that nearly half a billion rupees were made by these persons through this manipulation.
6. The SECP was all set to take action against these persons when the tenure of last Chairman Razi-ur-Rahman Khan came to an end in mid-January 2009. In fact

the SECP had even hired lawyers to file criminal case in the sessions court of Karachi against all these persons under Section 17 of Securities & Exchange Ordinance, 1969. If found guilty they can be convicted by the court for three years imprisonment and would be debarred from being director on any listed company and ousted from the financial market.

During investigation, two senior officers of Securities Market Division (SMD) of SECP, who were directly supervising the investigation in Karachi, resigned and left the SECP. It is said both these officers who themselves were from the market, had resigned under pressure from the corporate bigwigs involved in the fraud.

7. According to a source, the former chairman of the Commission Razi-ur-Rahman was reportedly asked to carry on even after January 2009 by President Zardari but was suddenly relieved and told on the last day of his first term by the Finance Ministry that he would not be getting a second term as chairman.

8. According to an official source there was an effort to introduce the proposed amendment in the SECP law as part of the finance bill but it could not be done because of the opposition of mandarins in the ministries of law as well as finance, who recommended that these amendments should be carried out through an Act of Parliament as these are serious amendments and will put SECP at the same level as NAB. However, a federal minister is said to have rejected these recommendations and instructed that these amendments should be carried out through a presidential ordinance.

Transparency International Pakistan therefore request SECP to clarify its position on the above quoted eight allegations, as SECP being a Regulator, on publication of the news report on 14th August, has come under tremendous pressure to perform, and prove its credibility.

With regards,



**Syed Adil Gilani,
Chairman,
Transparency International Pakistan**

Copy forwarded for the information of;

1. Chairman, PAC, Islamabad
2. Federal Minister of Finance, Islamabad

INTERNATIONAL THE NEWS

SECP seeks to cover up mega scam

Friday, August 14, 2009

By Ansar Abbasi

ISLAMABAD: The Security and Exchange Commission of Pakistan (SECP), which is sitting on an inquiry report over the alleged securities fraud of the corporate bigwigs, has sought an amendment in the SECP Act of 1997 in order to be endowed with the power of plea bargaining apparently to help the corporate bigwigs in question.

SECP Chairman Salman Ali Shaikh when contacted denied that the purpose of the amendments sought is to cover up a mega fraud as concluded by the SECP's report submitted early this year. There was no action taken by the SECP against the companies involved in the stock exchange fraud.

Sources claim that the SECP, which has been delaying and concealing the alleged corruption of the corporate bigwigs so far, wants the SECP Act to be amended to authorise the Commission to indulge in plea bargaining, which in this case is particularly motivated by the desire to conceal the criminal conduct of some bigwigs and let them go scot-free.

"If the SECP starts to aid and abet white collar criminals as opposed to checking, deterring and prosecuting them then the public interest in honest regulation of our corporate sector will be seriously compromised," a source said. However, the chairman SECP insisted that the provision of plea bargain is being added to the SECP Act for the reason that such powers are enjoyed by regulators all over the world.

His commissioner Suhail Dayala, who was contacted by this correspondent on the chairman's initiative, insisted that there is no link between the amendments sought in the SECP Act and the inquiry report into the stock exchange fraud.

Dayala said that the inquiry report is presently being assessed by the SECP's internal and external legal experts to ascertain if on the basis of available evidence the companies involved in fraud could be prosecuted in a court of law or not. He said that at this stage it would not be possible for him to say if any action could be taken against those held responsible by the SECP's own inquiry report.

Documents reveal that the SECP chairman approached the finance minister and the then adviser to prime minister on finance Shaukat Tarin on June 4 seeking amendments in the SECP Act 1997. Besides other amendments, the SECP seeks the insertion of a new provision 38B dealing with plea bargain. The proposed provision reads as: "Plea Bargain - Notwithstanding anything contained in any other law, where at any time after the commencement of any enquiry, investigation, trial or during the pendency of an appeal, a person agrees to return the assets or gains acquired or made by him in the course, or as a consequence, of any offence under this Act or any law administered by the Commission, the Commission may in its discretion, after taking into consideration the facts and circumstances of the case, accept the offer on such terms and conditions as it may consider necessary, and shall where trial had commenced refer the case for the approval of the court."

According to sources, in the aftermath of 2005 market crash, the SECP in the last three years took a number of steps to reduce the chances of market manipulation. These included introduction of Universal Identification Number (UIN) through which all trades on the market can be traced to identifiable persons. The SECP also purchased a surveillance system (AWACS) worth millions of dollars from international market.

Using this surveillance system, Securities Market Division of the SECP traced a classic case of market

manipulation in the shares of a limited company where the price of shares of the company was artificially jacked up by majority owners of the same company with active assistance from a number of brokers. Those associated with these companies and broker houses are considered highly influential and well connected.

A detailed investigation by the SECP, which was completed early this year, confirmed that market had indeed been manipulated and a substantial loss had been caused to innocent investors. It is estimated that nearly half a billion rupees were made by these persons through this manipulation.

The SECP was all set to take action against these persons when the tenure of last Chairman Razi-ur-Rahman Khan came to an end in mid-January 2009. In fact the SECP had even hired lawyers to file criminal case in the sessions court of Karachi against all these persons under Section 17 of Securities & Exchange Ordinance, 1969. If found guilty they can be convicted by the court for three years imprisonment and would be debarred from being director on any listed company and ousted from the financial market.

This matter while it was being investigated was in the knowledge of the market players as well as those persons who were being investigated. In fact one of those probed openly said that the then chairman SECP was investigating him due to personal issues as well as on the behest of other big rival brokers, especially a Karachi-based big name in the stock exchange business of Pakistan.

During investigation, two senior officers of Securities Market Division (SMD) of SECP, who were directly supervising the investigation in Karachi, resigned and left the SECP. It is said both these officers who themselves were from the market, had resigned under pressure from the corporate bigwigs involved in the fraud.

According to a source, the former chairman of the Commission Razi-ur-Rahman was reportedly asked to carry on even after January 2009 by President Zardari but was suddenly relieved and told on the last day of his first term by the Finance Ministry that he would not be getting a second term as chairman.

According to an official source there was an effort to introduce the proposed amendment in the SECP law as part of the finance bill but it could not be done because of the opposition of mandarins in the ministries of law as well as finance, who recommended that these amendments should be carried out through an Act of Parliament as these are serious amendments and will put SECP at the same level as NAB. However, a federal minister is said to have rejected these recommendations and instructed that these amendments should be carried out through a presidential ordinance.