



# Securities and Exchange Commission of Pakistan

Securities Market Division  
Market Supervision and Registration Department  
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No. Misc/MSW/SMD/1(5)/2004/

May 21, 2013

Mr. Saad Rashid,  
Executive Director,  
Transparency International-Pakistan,  
5-C, 2<sup>nd</sup> floor, Khayaban-e-Ittehad,  
Phase-VII, Defence Housing Authority,  
**Karachi**

**Subject: 1. Allegations of Insider Trading in Azgard Nine Ltd shares by JS Global Ltd in 2007/2008**  
**2. Allegations pertaining to JSCL awarding Fee of US\$ 4.3 million to a Director in 2013**

Dear Sir,

This is with reference to Transparency International ("TI") letter dated May 9, 2013 on the captioned subject and subsequent email dated May 18, 2013 addressed to the Chairman, SECP.

2. At the outset, I must appreciate TI for acknowledging the role the SECP has demonstrated for making our corporate sector and capital markets fair and transparent.
3. TI has raised few issues in the referred letter which demand a response from SECP to clarify the understanding and perceptions on part of TI, as it appears that TI lacks the knowledge with respect to technicalities involved in the subject issue. The seriatim response to TI comments on the highlighted issues are provided here under:

- (i) *"That SECP in the criminal complaint filed in –the Court of Session Judge, Karachi, 242/2013, has excluded fifteen companies/individuals reported involved in the Inside share trading of Azgard in SECP investigation Report dated April 15, 2009."*

Please note that SECP discharges its entrusted functions and responsibilities in accordance with the laws, rules and regulations being administered by SECP and the prescribed procedures & policies. For initiation of criminal proceedings against the potential accused, the Commission has devised a procedure and internal mechanism, and the power for filing a criminal complaint vests with the Commission. The Commission has to consider it with a view that all technical and legal aspects are taken into consideration in terms of substantiating the case in the courts, as the onus of proof lies on the prosecution. It is to be noted that the Commission before approving the investigation report wanted to satisfy itself that all charges had been made out. Therefore, the documents pertaining to the Investigation Report were reviewed by the external counsel appointed in the matter. The objective was to prepare a substantiated Complaint, supported by evidence, as anything based merely on opinions or



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presumptions would have most likely resulted in acquittal or the benefit may have been given to the accused. Therefore, such a review was imperative to have an objective assessment. As you know, success of criminal complaint depends on the availability of credible and direct evidence in respect of an alleged offence or a transaction in question. It is always prudent to limit the reference to those offences which are similar and flow from a particular transaction. Adding issues that are independent and unrelated to the case theory merely make the trial lengthy, cumbersome and largely unmanageable to the benefit of the accused. The Commission was of the view that if the investigation report in its present form is transformed into a complaint, it would have been hugely difficult to secure a conviction; In fact, conclusion of the trial would have become a remote possibility. It was, however, noted in respect of some of the individuals named in the Investigation Report, that although there was prima facie contribution towards the scheme detailed above, the evidence collected during the course of investigation did not necessarily establish their involvement in the scheme of manipulation beyond a reasonable doubt. You would appreciate that in order to establish criminal liability, the available evidence should meet the criteria of being 'beyond reasonable doubt'. Moreover, it is important to mention here that the Commission has to strive to ensure that it has satisfied all the legal requirements before taking any stern action, such as filing of a criminal complaint, as a half-baked attempt might wrongfully damage the repute of the concerned business and sponsors.

In view of the above, there was extensive review of the evidence and the Investigation Report by the internal team of the Commission along with external counsel. They reviewed the data and documents gathered by the Investigation Team in respect of each person referred in the Investigation Report, independently of the findings given for each person in the Investigation Report itself. It is pertinent to mention here that one of Investigation officer in the ANL Investigation sent an email through which she raised some concerns about the investigation report possibly being challenged on its authenticity. At the same time, the Investigation officer also disagreed with some of the persons recommended as accused by the independent committee.

Finally, a list of persons who should be proceeded against criminally, based on the gist of available evidence against them, was recommended to the Commission. The Commission granted approval of the list of the companies/individuals to be prosecuted in the matter.

The matter is now *sub judice* before the Court of the Competent Jurisdiction. It is also pertinent to mention here that JS Investment has filed Constitutional Petition No. D-



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1985 of 2013 before the Honourable High Court, Karachi and inter alia impugned the very initiation of investigation order in ANL matter as Section 21-B & 29 of the SECP Act, 1997 was inserted through Finance Acts, 2007 & 2008 and apex Court Judgment titled as *Mir Muhammad Idrees Vs. Federation of Pakistan & others (PLD 2011 SC 213)* was relied upon.

The Honourable High Court has since suspended the proceedings in the subject private complaint before the trial Court. The Commission is contesting the matter in the Court

(ii) *“That Mr. Zafar Abdullah was the CEO of Crosby Dragon Fund, at the time when this Inside Trading Occurred during April 2007 to April 2008.”*

With regard to Mr. Zafar Abdullah being CEO of Crosby Dragon Fund (CDF), it may kindly be noted that Mr. Zafar Abdullah was never the CEO of CDF or its Asset Management Company (AMC). As a matter of fact, Mr. Abdullah was the CEO of Crosby Securities Pakistan (Private) Limited (CSPL), a licensed corporate brokerage house, which was completely separate and independent from CDF and Crosby AMC in terms of the Board of Directors and the management. Moreover, in terms of the relevant statute and the regulatory framework thereof, a corporate brokerage house and an asset management company and its funds should have separate and independent respective managements and Boards of Directors and Crosby brokerage house and Crosby AMC were compliant with these statutory conditions.

It may further be noted that Mr. Zafar Abdullah had joined CSPL on 15 February, 2008 and it had started commercial operations from May 29, 2008, whereas in ANL manipulation case, the second review period was also over in early part of April 2008. Thus, CSPL the brokerage house, headed by Mr. Abdullah, had neither indulged in any sort of direct or indirect trading of ANL shares nor had any connection with Crosby AMC or Crosby Dragon Fund.

Furthermore, it is pertinent to state the factual position, that the name of Crosby Dragon Fund was excluded from the list of accused by the Commission on October 20, 2011, whereas Mr. Zafar Abdullah joined the Commission much later on August 17, 2012

(iii) *“That TFC of Azgard at approx. Rs 1 billion were sold by the JS Group to Evacuee trust after April 2008, at four times the market price.”*



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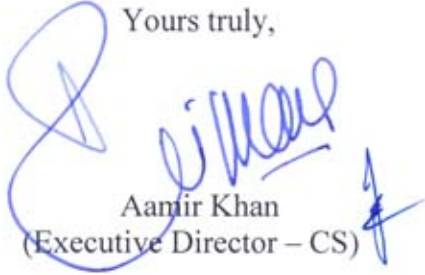
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This matter pertains to Evacuee Trust Fund and SECP is not in a position to offer any comments in the matter, as Evacuee Trust Fund is not regulated by SECP.

- (iv) *“That JS Growth Fund and JS Large Cap. Fund, have sold 1,606,688 PICT shares at Rs. 101.59 to Bank Julius Baer & Co. Ltd Switzerland, on 24 February 2012, and that Bank Julius Baer & Co. Ltd in fact bought it for JS Group, as JSGCL has commercial relationship with them.”*

This matter is under investigation at SECP.

Yours truly,

  
Aamir Khan  
(Executive Director – CS)

Copy to:

1. PSPM, Prime Minister House, Islamabad
2. Secretary, Finance Division
3. Secretary, Law and Justice Division
4. Secretary, Commerce Division
5. Chairman, NAB, Islamabad
6. Governor, State Bank of Pakistan
7. Registrar, Supreme Court of Pakistan, Islamabad
8. Chairperson, CCP, Islamabad