



# Securities and Exchange Commission of Pakistan

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No. 5(1) CS/SECP/TIP/2013 -47

May 28, 2013

Syed Adil Gilani  
Adviser  
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 24, 2013 received on May 28, 2013, on the captioned subject addressed to the Chairman, SECP. The seriatim responses to TI comments, on the highlighted issues are provided hereunder:

1. *"Inform National Accountability Bureau to take action under NAO 1999 against the 38 companies and individuals, and Chairman & Commissioners of SECP from 2009 to 2013 for their willful failure to prevent the grant, or rendition of any undue benefit and favour which they were required to prevent by exercising their authority."*

SECP as per its mandate under the law has already filed a criminal complaint No.242 of 2013 against the accused under Section 17 read with 24 of Securities and Exchange Ordinance, 1969 before 3<sup>rd</sup> Additional Session Judge (South) at Karachi which is pending adjudication, although further proceedings have been stayed by the Honorable Sindh High Court in a Constitutional Petition No. D 1985 of 2013 filed by JS Investment.

2. *"Confirm from Evacuee Trust the allegation that TFC of Agritec Azgard valued at approx. Rs.1 Billion were sold by the JS Group to Evacuee Trust after April 2008, at four times the market price."*

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.

3. *"Action taken on the loss NICL suffered due to its imprudent investment of Rs.2.00 billion in JS Principal Fund - Rs.255.243 million on 13 March 2009, immediately after Mr. Muhammad Ayyaz Niazi was appointed as Chairman NICL on February 12, 2009. [AGP Audit Report of NICL submitted in the Supreme Court in Suo Moto Case 18 of 2010]."*

With regards to the point stated above, your attention is invited towards Section 196(2)(e) of the Companies Ordinance, 1984 which states:

"196. Powers of directors.-



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(2) The directors of a company shall exercise the following powers on behalf of the company, and shall do so by means of a resolution passed at their meeting, namely:

"to invest the funds of the company;"

Therefore, the Board of Directors of any Company, by virtue of the aforesaid Section of the Companies Ordinance, 1984, has the sole prerogative to invest the funds of a Company, in such avenues which it deems fit. It is further pressed that the decision of investment in a particular fund/security is purely a business decision and it is also implied that gains and losses do arise in the wake of investment activities undertaken by companies.

Moreover, the Insurance Ordinance, 2000 also does not require the SECP to interfere in investment-related business decisions of insurance companies

However, in accordance with the solvency regime applicable on insurers, the SECP does monitor the investments to the extent of their admissibility under the applicable solvency regime.

4. *"Action against those responsible as Public has suffered losses of billions of rupees due to insider trading in Azgard Nine Ltd. shares, and payment of \$ 4.3 million in one case to the son of Jahangir Siddiqui, Mr Ali Jahangir, Chief of brokerage house."*

For action against those responsible for insider trading in Azgard Nine Ltd., please refer to our comments in the para (5) below.

With regard to the payment of USD 4.3 million to Mr. Ali Jahangir Siddiqui, it is intimated that the matter is under probe by the Commission.

5. *"Action taken against the 38 companies and individuals guilty of insider trading, under Section 15 (A) (4) and Section 15 (E), SECP Ordinance 1969 for recovery at 3 times the gains made by them, and imprisonment for a term which may extend to three years."*

The matter was explained in detail to TI vide our reply dated May 21, 2013.

Please note that the matter is now *sub judice* before the Court of Competent Jurisdiction. It is also pertinent to mention here that JS Investment has filed Constitutional Petition No. D 1985 of 2013 before the Honorable High Court, Karachi and inter alia impugned the very initiation of investigation order in ANL matter as Section 21-B and 29 of the SECP Act, 1997 were inserted through finance Acts, 2007 and 2008 and apex Court Judgment titled as *Mir Muhammad Idress Vs. Federation of Pakistan & others (PLD 2011SC 213)* was relied upon.

The Honorable 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.

6. *"When it was recommended in SECP's own report that the Bank Julius Baer & Co. Ltd. Switzerland be asked to provide the rational of heavy investment in the scrip of PICT and on whose behalf the Bank bought shares of PICT, why SECP has failed to do so, and who is stopping SECP?"*



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This matter is under investigation at SECP. Bank Julius Baer has objected to provide the requisite information to SECP. SECP has officially requested the Swiss Regulatory Authority for provision of information. However, due to the procedures prescribed by Swiss law, it is still difficult to estimate when they will be in a position to respond to our request.

nil. "..... with regards to relationship of Crosby Fund with Crosby Asset Management Company as stated by SECP is wrong

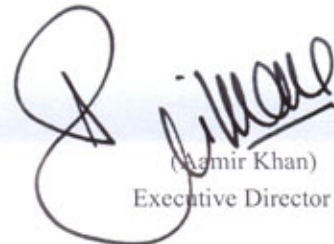
Crosby Group is a large international group engaged in Merchant Banking, Investment Banking, Asset Management and Brokerage. It operates in various countries, including United Kingdom, Hong Kong and Singapore. One of the group companies, Crosby South Asia Limited had two separate and distinct entities incorporated in Pakistan, the Crosby Asset Management Company (which had a fund by the name of Crosby Dragon Fund - CDF), and a second company, Crosby Securities Brokerage Company. Both were independent and unrelated, except in so far as common sponsorship.

We would reiterate our already communicated stance (through our letter dated May 21, 2013) that Crosby Securities Pakistan Limited (CSPL), a licensed corporate brokerage house, being a separate company, 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.

We must emphasize that Mr. Zafar Abdullah had joined CSPL on February 15, 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 it had any connection with Crosby AMC or Crosby Dragon Fund, except for common sponsorship.

Furthermore, it is pertinent to state the factual position, that the name of CDF 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

We hope that you find the above satisfactory.

  
(Amir Khan)  
Executive Director

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