



Securities and Exchange Commission of Pakistan
Securities Market Division
Public Offering and Regulated Persons Department

No.2 (72) SMD/PRPD/2017

October 11, 2017

Chief Executive Officer,
Switch Securities (Pvt.) Limited,
Room No 417, LSE Building,
19-Khayaban-e- Aiwan-e-Iqbal,
Lahore.

Subject: Order in Respect of Show Cause Notice dated July 19, 2017 Bearing Number No. 2(72) SMD/PRPD/2017

Dear Sir,

Please find enclosed herewith a copy of order in the title matter for your record and necessary action.

Yours truly,

Sabeel Ahmed
Assistant Director (PRPD)

Copy to:

1. Chief Executive Officer,
Central Depository Company of Pakistan Limited,
CDC House, 99-B, Block-B, S.M.C.H.S.,
Main Shakra-e-Faisal,
Karachi.

2. Chief Compliance and Risk Officer,
National Clearing Company of Pakistan Limited,
8th Floor, Stock Exchange Building,
Stock Exchange Road,
Karachi.

3. Acting Chief Regulatory Officer
Pakistan Stock Exchange Limited,
Stock Exchange Building,
Stock Exchange Road
Karachi.



Securities and Exchange Commission of Pakistan
Securities Market Division

Before the Commissioner (Securities Market Division)

In the matter of Show Cause Notice Issued to Switch Securities (Pvt.) Limited

<i>Date of Hearing</i>	<i>July 31, 2017</i>
<i>Present at the Hearing</i>	
<i>Representing Switch Securities (Pvt.) Limited</i>	<i>(i) Mr. Ali Raza Jaffery-Chief Executive officer-Switch Securities (Pvt.) Limited</i>
<i>Assisting the Commissioner (SMD)</i>	<i>(i) Mr. Javed Akhter Malik (Joint Director-PRPD)</i> <i>(ii) Mr. Sabeel Ahmed (Assistant Director-PRPD)</i>

ORDER

This Order shall dispose of the proceedings initiated through Show Cause Notice bearing No. 2(72) SMD/PRPD/2017 dated July 19, 2017 ("SCN") served to M/s. Switch Securities (Private) Limited ("Respondent") by the Securities and Exchange Commission of Pakistan (the "Commission") under section 150 of the Securities Act, 2015 (the "Act"). The Respondent is a Trading Right Entitlement Certificate ("TREC") holder of the Pakistan Stock Exchange ("PSX") and deemed licensed under section 177(3) and 178(2) (e) of the Act to carry out the business of Securities Broker, which are reproduced hereunder:

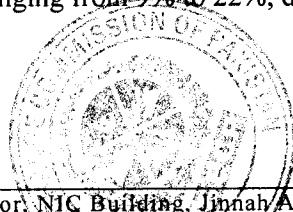
"177. Transitional provisions.

(3) *A person who, immediately prior to the commencement of Part V of this Act, is registered as a broker under section 5A of the Securities and Exchange Ordinance, 1969 (XVII of 1969), shall be deemed to be licensed under this Act as a securities broker till the time his existing certificate of registration remains valid and shall thereupon be required to obtain a licence under this Act and such person shall also be allowed to effect transactions in futures contracts until such time as it may be required to obtain a separate licence as a futures broker.*

178. Repeal and savings.

2.(e) *any licence, certificate or document issued made or granted under any enactment hereby repealed shall be deemed to have been issued, made or granted under this Act and shall, unless cancelled in pursuance of the provision of this Act, continue in force till the date specified in the certificate or document.*

2. Brief facts of the case are that the Commission conducted review of annual accounts of the Respondent for the year ended June 30, 2016 ("Accounts"). Review of the Accounts revealed that the Respondent has received an amount of Rs. 96.995 million under loan agreement from 19 individuals on predetermined return ranging from 9% to 22%, details as under:





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S.NO	Name of Individuals Provided Funds at predetermined Rate	Amount of loan obtained by the Respondent (Rs) in 2016	Rate of return in (%age)
1	Nishat Ahmed	10,745,485	9
2	Muhammad Rashid	3,401,852,	17.95-18.05
3	Talat Nishat	12,642,397	18
4	Syed Imtiaz husain	11,702,772	15.45-17.05
5	Amreen Mehmood	1,591,314	13.45-13.55
6	Abida Farhat	13,187,080	14.45-22.05
7	Amina Riaz	13,996,227	18.45-18.55
8	Safdar husain khan	994,485	14
9	Nida Mehmood	350,298	13.45-13.55
10	Mehmood Aslam	1,306,775	13.45-13.55
11	Fehmeeda perveen	202,303	13.95-14.05
12	Jibran Mehmood	1,167,515	16.45-16.55
13	Shahid Mehmood	3,041,917	16.95-17.05
14	Agha Hassan Haider	3,543,151	14.95-15.05
15	Nighat Fatima	2,828,914	12-12.5
16	Syed Mohammad Sohail	3,040,690	16.45-16.55
17	Shabbir Kambaty	2,156,700	13.95-14.05
18	Sameera Mohsin Gillani	10,102,854	13.95-16.55
19	Farhat Arif	992,352	13.95-14.05

3. Copies of agreements provided by the Respondent vide letter dated March 21, 2017 for placement of funds between the Respondent and the individuals mentioned above reflects pre-determined rate of return, tenure and loan amount. Further, review of the trading data for the period from June 30, 2015 to June 19, 2017 of the Respondent revealed that three (3) out of 19 individuals provided long term loans to the Respondent amounting to Rs. 17.6 million are also customers of the Respondent. The names of such persons are as under:

9th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad, Pakistan
PABX: 92-51-9100472 FAX: 92-51-9100440 URL: www.secp.gov.pk



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S. No	Name of the Customers of the Respondent Provided Funds at predetermined Rate	Amount of loan obtained by the Respondent (Rs) in 2016	Rate of return in (%age)
1	Nishat Ahmed	10,745,485	9
2	Muhammad Rashid	3,401,852,	17.95-18.05
3	Agha Hassan Haider	3,543,151	14.95-15.05

4. The above instances revealed that the Respondent by accepting money from its customers and individuals with pre-determined rate of return has, *prima facie*, raised deposits and contravened section 64(2), 65(2) of the Act, clause 4.4.6 of the Rule Book of PSX (“Rule Book”) and regulation 16(2)(k) of the Securities Brokers (Licensing and Operations) Regulations, 2016 (“Brokers Regulations”). The relevant provisions of law are reproduced as under:

(i) sub-section (2) of section 64 of the Act provides as under:

“64 (2) A licence granted under this Act shall specify the regulated securities activity or activities that the regulated person is permitted to undertake and such person shall be restricted to such regulated securities activity or activities so specified.”

(i) sub-section 2 of section 65 of the Act provides as under:

“(2) A regulated person that is licensed to indulge in a regulated securities activity shall be restricted to undertake only that activity exclusively”.

(ii) Clause 4.4.6 of the Rule Book provide as under:

“The applicant company must not be engaged in any business other than that of a Broker or other related business as approved by the Commission from time to time”.

(iii) Regulations 16(2)(k) of the Brokers Regulations provides as under:

“A Securities Broker shall not accept any money from a customer on a promise of predetermined or guaranteed return”.

5. In light of the findings of the Review, the Commission served the SCN to the Respondent under section 150 of the Act. The Respondent was thereby:

(i) Called upon to show cause in writing as to why action should not be taken under section 150 of the Act for the aforementioned non-compliances.

(ii) Advised to appear before the undersigned on July 31, 2017 at 11:00 a.m. to explain the stance in person.

6. The written response of the Respondent was received in this office on July 26, 2017. The submissions made by the Respondent in its written response may be summarized as under:



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“ In the SCN, you have referred to various clauses of the Securities Act 2015 on general role to which a regulated entity would be restricted to, a supporting clause from PSX Regulations and a specific Regulation 16(2)(k) (the Regulation) of the Securities Brokers (Licensing and Operations) Regulations, 2016 (Regulations 2016) explicitly restricting a certain activity which is subject of the SCN.

The Regulations reads as follow:

A Securities Broker shall not accept any money from a customer on a promise of predetermined or guaranteed return”.

Since the Regulation is the most specific on the subject agitated in the SCN we deem it having overriding effect over general clauses mentioned in the SCN that we understand would be interpreted in accordance with the Regulation as far as acceptance of money on a predetermined return is concerned. Consider:

It is a settled principle of law that special excludes general. It is established that when any matter is specifically prohibited then prohibition would not exceed the extent that has been specifically defined. The said principle is more precisely celebrated in maxim "Expressio unius alterius exclusio" (express mention of one thing implies the exclusion of another). Therefore, to our understanding, the entire extent of the prohibition regarding acceptance of money on a predetermined return would be adjudged under the purview of the Regulation and general clauses of the Securities Act 2015 and the PSX Regulations as mentioned in the SCN would be interpreted restrictively to the extent of the restrictions defined in Regulations.

Since word "customer" has been used in the Regulation which term has not been defined anywhere in Regulations 2016, it would be pertinent to reproduce relevant definitions of term "customer" as appearing in section 2 of the Securities Act 2015, as follows:

Xv. "Customer" means a person on whose behalf a regulated person carries on any regulated securities activity and includes any person commonly known as an investor;

Xvii. "Customer money" means money of any currency that, in the course of carrying on his regulated securities activity, a regulated person holds or receives on behalf of a customer or which he owes to a customer;

From the above definitions, we understand the term customer ' has direct relevance to "regulated securities activity" and cannot be read beyond the said scope. Even the term "investor", as appearing in the above definition, is confined to "the regulated activity" and cannot be applied to a person who is not interested in the regulated activity.

Our above understanding is further strengthened by clause "xvii" above, where "customer money" is defined as currency that in the course of carrying "regulated activity" a securities broker would hold or receive on behalf of the "customer". You would appreciate that it is an unquestionable pre-requisite for any money to be considered or treated as "customer money" that it must be held or received on account of the "regulated activity".



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It goes without saying that no money could be treated as "customer money" unless it is deposited with the securities broker in purview of the "regulated activity" i.e. selling and purchasing of the securities.

We have also taken into account the fact that term "individual" could have been used in the Regulation instead of term "customer" and if that were the case the scope of the Regulation would have extended to all individuals within or outside the regulated activity. However, that is not the case.

In view of the above, we find no fault with understanding that the use of words "a customer" in the Regulation defines the contours within which the Regulation would be restricted, and thus all general clauses of the Securities Act 2015 and the PSX Regulations as mentioned in the SCN as far as acceptance of money on a predetermined return is concerned; any matter falling beyond the said scope would be excluded from their application.

To us the legal status is that any person on whose behalf we are not engaged in the regulated activity would not be treated as a "customer" as defined in the Regulation, and therefore would be out of the purview thereof and of the Securities Act 2015 and the PSX Regulations, accordingly.

Regulations 2016 are Prospective in Nature

We would also bring to your kind attention the fact that the application of the Regulation is with prospective effect from the date Regulations 2016 have been notified i.e. 27 October 2016. The persons discussed in the SCN are connected with us prior to promulgation of the Regulations 2016 and there is nothing in Regulations 2016 or in the Regulation itself that extend their application retrospectively.

Concluding Note

The above is however our understanding of law that we have frankly discussed with you with the hope that you would guide us further on the matter. We shall remain open to your further guidance, lenient view and assure you our full support and cooperation in making our brokerage house fully compliant with all the relevant laws.

7. On the given date, Mr. Ali Raza Jaffery, Chief Executive Officer of the Respondent ("Representative") appeared before me in person at Commission's head office located in Islamabad. The Representative during the course of hearing admitted that the Respondent has obtained loans from its customer on a pre-determined/fixed rate of return. The Representative further assured that the Respondent would return the loans obtained from its customers. Since, the Representative was not able to give any timeline, therefore, the ultimate sponsor of the Respondent namely Mr. Ali Aslam Malik was personally called to appear on August 08, 2017. On the given date, Mr. Ali Aslam Malik appeared before Executive Director - Public offering and Regulated Persons Department ("ED-PRPD"). Mr. Ali Aslam Malik was directed to immediately return the deposits obtained from the customers of the Respondent on a pre-determined/fixed rate of return. Mr. Ali Aslam Malik requested to allow him one-month time for repayment of deposits. Since, Mr. Ali Aslam Malik did not settle the deposits raised from customers of the Respondent; therefore, he was again called upon to appear before ED-PRPD on September 18, 2017. On the given date, Mr. Ali Aslam Malik appeared before the ED-PRPD at Commission's head office located in Islamabad and requested to further grant him time till November



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30, 2017 to settle the deposits obtained by the Respondent from its customers. Moreover, Mr. Ali Aslam Malik vide letter dated September 19, 2017 submitted the verbal commitment in writing to the Commission.

8. I have heard the arguments presented by the Representative during the hearing. Additionally, I have perused the available record, existing regulatory framework applicable, written response filed by the Respondent vide letter dated July 26, 2017 and verbal submissions made by its Representative during the course of hearing.

The material issues that emerge from the facts of SCN, reply submitted by the Respondent and submission made by the Representative along with my conclusions are as follows:

- (i) With regard to the plea of the Respondent that *Special law excludes General*, it is mentioned that, for a brokerage house, the Act is a primary statute whereas Rule Book and Broker Regulations are subsidiary legislations as they are made under it. Any activity that is barred in primary legislation cannot be allowed through subsidiary legislations. Securities brokers are only allowed to carry out the brokerage activity and not of deposit taking activity under the primary legislation. Section 64(2) and 65(2) restricts a securities broker from undertaking activities other than regulated securities activities. Acceptance of deposit by the Respondent from its customers on a pre-determined/fixed rate of return is beyond the scope of regulated and permissible securities activities; hence, it is violation of Act.
- (ii) With regard to assertion of the Respondent regarding definition of the term “customer”, the plea of Respondent is neither tenable nor acceptable. It is stated that as soon as a person signs a Standardized Account opening form (“SAOF”), it becomes a customer/investor. The Respondent vide letter dated July 07, 2017 provided copies of SAOFs of all the individuals as on June 30, 2016 which substantiates that all the individuals mentioned in SCN are customers of the Respondent. Moreover, the relevant department of the Commission has informed that three clients namely Mr. Nishat Ahmed, Mr. Muhamad Rashid and Mr. Agha Hassan Haider have traded in their accounts through the Respondent after July 01, 2016.
- (iii) With regard to the assertion of the Respondent that Brokers Regulation are prospective in nature and notified on October 27, 2016, the plea of the Respondent is untenable as the Brokers Regulations were promulgated on June 24, 2016 and not on October 27, 2016. Further, the Brokers Regulations does not allow any additional time to comply with the regulation.

The Respondent further stated that the said customers were connected with the Respondent prior to the promulgation of the Brokers Regulations.

In this regard, after going through the following regulatory framework applicable on the Respondent, It is evident that deposit taking by a broker was prohibited before promulgation of Brokers Regulations. Clause 4.4.6 of the Rule Book of PSX stipulates that “*applicant company must not be engaged in any business other than that of a broker or other related business as approved by the commission*”. The term broker is clearly defined in *sub section (iv) of Section 2 under Part I of the Act and chapter 2 of PSX Rule Book*, which do not allow deposit taking to a broker.

Furthermore, there is prohibition on acceptance of deposits from public under Section 88 of the then Companies Ordinance, 1984 and under Section 84 of the Companies Act, 2017.



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Since the Respondent is registered as Company, therefore the Respondent was liable to be complaint with the provisions of Companies Ordinance and Companies Act.

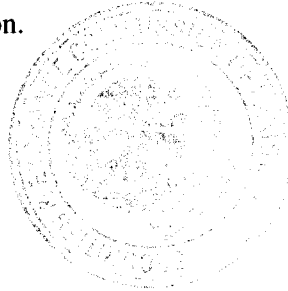
Based on above, I conclude that, the plea made by Respondent is not tenable.

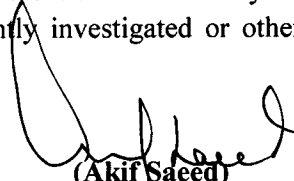
9. In view of the foregoing, the violations of the regulatory framework committed by the Respondent are established. The Respondent by obtaining short term and long-term loans from its customers on pre-determined/guaranteed rate of return has made noncompliance with the provisions of Broker Regulations and the Act. The Respondent was provided ample time to repay the loans obtained from its customers. However, the Respondent did not pay any heed to the direction of the Commission and continued to gain extra time without submitting any justifiable reason. Any non-compliance by a Regulated Person is a serious matter. I, in exercise of the powers conferred upon me by virtue of section 150 of the Act, hereby impose a penalty of Rs. **1,000,000/- (Rupees One Million Only)** and **SUSPEND** the licence of the Respondent as a securities broker till the time the Respondent ensures repayment of deposits to its customers and compliance with Circular No 20 of 2017.

Furthermore, in exercise of the powers conferred under section 12, 31 and 55 of the Act, I hereby direct PSX, Central Depository Company of Pakistan Limited (CDC) and National Clearing Company of Pakistan Limited (NCCPL) to proceed further as per regulatory framework and in light of this order.

10. The matter is disposed of in the above manner and the Respondent is directed to deposit the fine in the account of the Commission being maintained in the designated branches of MCB Limited or United Bank Limited not later than fifteen (15) days from the date of this order and furnish the copy of the deposit challan to the undersigned.

11. 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.




(Akif Saeed)
Commissioner (SMD)

Announced on: October 11, 2017