



Through Courier

Before The Director / HOD (Market Surveillance and Special Initiative Department)

In the matter of Show Cause Notice no. issued to Service Provident Fund

under Section 15 E (1) of the Securities and Exchange Ordinance, 1969

Date of Hearing:

January 22, 2015

Present at the Hearing:

(i) Mr. Jawwad Faisal

Chief Financial Officer,
Service Industries Limited

(ii) Mr. Rashid Sadiq

Authorized Representative of Service Provident
Fund

Assisting the Director (SMD)

(i) Ms. Tayyaba Nisar

Deputy Director

ORDER

- 1 This order shall dispose of the proceedings initiated through Show Cause Notice bearing No. SMD/MSW/SRVI/75/2014 dated December 03, 2014 ("**the SCN**") issued by the Securities and Exchange Commission of Pakistan ("**the Commission**") under Section 15E of the Securities and Exchange Ordinance, 1969 ("**the Ordinance**") to Service Provident Fund ("**the Respondent**") through its Board of Trustees comprising of the following at the time of issuance of the SCN:

i.	Mr. Ahmed Javed
ii.	Mr. Omar Saeed
iii.	Mr. Arif Saeed
iv.	Mr. Hassan Javed

Chief



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- 2 The Respondent is governed by its Trust Deed and the Rules made thereunder and the members or beneficiaries of the Respondent are permanent employees/ directors of Service Industries Limited (“SRVI”).
- 3 SRVI, through its notice dated August 20, 2014 addressed to the KSE and LSE, SRVI informed that meeting of Board of Directors (“BOD”) of SRVI will be held on August 28, 2014 to consider the Half Yearly Accounts of the Company for the period ended June 30, 2014. SRVI through its notice dated August 28, 2014, announced the half yearly results for the period ended on June 30, 2014 declaring Earning Per Share (“EPS”) of Rs. 39.57, as compared to the last year’s EPS of Rs. 29.29 registering an increase of 35%. The Company also announced 100% interim cash dividend.
- 4 The perusal of trading data of KSE for the period from August 11, 2014 till August 28, 2014 (“the Period”) showed that the share price of SRVI witnessed considerable increase. The share price opened at Rs. 533.76 on August 11, 2014 and closed at Rs. 631.02 on August 28, 2014.
- 5 The review of the trading data of KSE for the period from August 11, 2014 to August 18, 2014 transpired that the Respondent bought 53,400 shares of SRVI with average price of Rs. 536.477 per share.
- 6 The Commission vide letters dated September 30, 2014, October 15, 2014, October 27, 2014, November 11, 2014 sought the information, from SRVI which included details regarding the BOD meeting of SRVI held on August 28, 2014, copy of the trust deed of the Respondent, details regarding Investment Committee (“IC”) of the Respondent and its meetings vide which the decision of Investment in the shares of SRVI by the Respondent was taken, etc.
- 7 The review of various documents and information provided by RS Corporate Advisory Services (Pvt) Limited (“Authorized Representative”), the authorized representative for SRVI and the Respondent, showed that Board of Trustees of the Respondent consists of members of senior management of SRVI; details of same are as follows:

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Securities Market Division – Market Surveillance and Special Initiative Department
NIC Building, 63 Jinnah Avenue, Islamabad, Pakistan



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Sr. No.	Trustee of the Respondent	Position in SRVI
1.	Mr. Ahmed Javed	Chairman
2.	Mr. Omar Saeed	Chief Executive Officer
3.	Mr. Arif Saeed	Director
4.	Mr. Hassan Javed	Director

- 8 A certified true copy of the Board resolution passed by the Trustees of the Respondent dated June 26, 2013 resolved that the members of IC will be following officers of SRVI, as given below:

Sr. No.	Investment Committee	Position in SRVI
1.	Mr. Muhammad Ejaz Chairman	Country Manager Marketing
2.	Mr. Muhammad Suhail Akhtar Chaudhry, Member	General Manager Domestic Sales

Further, the contents of the certified copy elaborated that IC will independently make the investment decisions of the Respondent.

- 9 The Authorized Representative submitted that trading orders on behalf of the Respondent are either placed by the members of the IC or in their absence by any officer of the level of Manager or above as may be designated by the IC. The list of the said officers is presented as below:

Sr. No.	Investment Committee	Position in SRVI
1.	Mr. Liaqat Ali	Manager Import
2.	Mr. Masoom Raza	Manager Sourcing
3.	Mr. Usman Liaqat	Manager Finance
4.	Mr. Rana Saeed Ahmed	Manager Marketing Services
5.	Mr. Jawwad Faisal	Chief Financial Officer
6.	Mr. Yasir Ali	Manager Treasury

- 10 The Respondent is maintaining its trading account with IGI Finex Securities (Pvt) Limited ("the **Brokerage House**"), TREC holder of KSE. The Commission sought information from the Brokerage House, vide letters dated September 30, 2014 pertaining to trading account



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maintained by the Respondent, which comprised of the complete Standardized Account Opening Form (“**AOF**”), CDC-sub Account Form, Trading Statements, Financial Ledgers, copies of cheques and/or any other instrument used for receipts/payments, the statements showing receipts/payments and the telephonic recording for placement of order.

- 11 The information received by the brokerage house was analyzed which indicated following findings:
- The telephonic recording for the placement of the orders showed that Mr. Jawwad Faisal, Chief Finance Officer of SRVI (“**CFO**”) was placing the orders on the behalf of the Respondent. It is pertinent to mention that telephonic record indicated that the CFO was singly placing the orders for the investments and divestment decisions of the Respondent. Further, the conversation also indicated his significant contribution towards the investment decisions of the Respondent.
 - The copy of CNIC of the CFO was also annexed with the AOF of the Respondent.
- 12 From the aforesaid, *prima facie*, it appeared that the Respondent traded in the shares of SRVI just before the public dissemination of the results disclosed to the Respondent by the CFO, which he possessed by virtue of his position in SRVI. Therefore, a SCN dated December 03, 2014 was issued to the Respondent as to why action should not be taken against it under section 15E of the Ordinance for trading on the basis of material non-public information pertaining to the half yearly financial results of SRVI which was disclosed to it by the CFO of SRVI. The Respondent was required to submit its written reply to the SCN within ten days of the SCN and appear before the undersigned on December 29, 2014 for hearing in the matter.
- 13 The Authorized Representative vide letter dated December 12, 2014 requested for extension in submission of written response and date of hearing, which was acceded to.
- 14 The written response by RS was submitted vide letter dated January 01, 2014. The relevant portions of the written response are summarized as below:



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- i. *SRVI is highly successful Company with a proven track record of success with significant profits and dividend declaration on an interim/ annual basis. The results of the Company can be easily predicted based on the past records alone. There is no significant variation in gross profit in comparison to the latest published quarterly unaudited financial statements for the quarter ended March 2014...*
- ii. *The results of SRVI including the EPS of the Company happened to be inline with the market expectation as the Directors' Report attached to the published accounts for the period ended March 2014 clearly and unambiguously gave an indication about the sales growth in the period ended June 2014. All the information that could effect the market price of the shares of SRVI was already in public knowledge and accessible to any interested person intending to review the same...*
- iii. *The EPS of Rs. 39.57 for the half year ending June 2014 was not due to any significant unusual change in the usual profits of which could be construed as price sensitive/ inside information in terms of Section 15 D of the SEO, 1969 read with notification No. 1431(1)/2012 dated December 05, 2012 to be reported to the Stock Exchanges and the Commission...*
- iv. *It is pertinent to mention that SRVI's second quarter results are markedly positive in recent years due to their coincident with the twin Eids in Islamic calendar which boosts the consumer spending resulting in increased sales...*
- v. *As regard to the share price of SRVI during the period from August 11, 2014 to August 18, 2014, it must be appreciated that this is a normal phenomenon in the stock market that shares of the listed companies start active trading after the closure of quarterly, half yearly and annual accounts...*
- vi. *The stock brokers, investment advisors, financial analysts and media reports had already projected improved performance of the Company, therefore, SRVI's financial results of June 30, 2014 cannot be considered as "inside information" ...*



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- vii. *The CFO falls under the category of Insider as defined in Section 15C(1)-a of the Ordinance, which provides that insider shall include, sponsors, executive officer and directors of an issuer...*
- viii. *Further, the decision of announcement of cash dividend of 100% can only be taken by the directors; any information in this regard simply did not exist before the decision of the directors of SRVI during their meeting on August 28, 2014. Therefore, the Respondent by no means had access to this information before the day of BOD meeting and thus could not pass it on to the Respondent...*
- ix. *The notice mistakenly assumes that the CFO disclosed the information relating to financial results of SRVI to the Respondent. The Notice assumes the CFO placed the orders with broker on behalf of the Respondent, he must have been involved in investment decision making of the Respondent as well. IC of the Respondent is authorized and responsible to make investment decisions on the behalf of the Respondent. Therefore, it is noted that being an insider is not a crime and being in possession of inside information is also not a violation of Section 15 A of the SEO, 1969. It is submitted that the CFO was simply executing the decisions of the IC in ministerial capacity and didn't disclose any information to the Respondent or its IC pertaining to the upcoming financial results of the SRVI or Dividend announcement which didn't exist...*
- x. *No evidence whatsoever is provided of any disclosure of inside information by the CFO to the Respondent or its IC. No correspondence or other proof of communication in respect of so called inside information exchanged between the CFO and the Respondent or its IC as referred in the notice. It has been held by the Appellate Bench of the Commission in its Rulings that in absence of proof of transmission of information, the offence of passing inside information cannot be established...*
- xi. *Further, regarding the difference in the resolution provided by the Respondent and the Brokerage House, it is clarified that these are two different resolutions passed subject to different matters. One pertains to the Constitution of the IC and other for specifying the broker the personnel authorized to place orders with the broker...*



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15 The Respondent was directed to appear before the undersigned on January 21, 2015.

16 On the date of hearing the Authorized Representative and the CFO appeared before the undersigned. The CFO of SRVI and the Authorized Representative reiterated the assertions made in the written response. Further, the assertions submitted by them during the course of hearing are summarized below:

- i. *SRVI is maintaining a huge fund with size of Rs. 1.2 Billion out of which approximately 28% is dedicated to the equity investments. Investment in the equities is only done as long term investment.*
- ii. *The meeting of the IC was held on June 28, 2014 at the registered office of SRVI.*
- iii. *The IC accorded approval to invest surplus funds amounting Rs. 300 Million in Fixed Income SMAs equally through three Asset Management Companies i.e., NAFA, Faysal Bank Limited and United Bank Limited, and a maximum of Rs. 40 Million be invested in the securities of Rs. 40 Million be invested in the shares of SRVI.*
- iv. *The Investment as well as trading in the shares of SRVI will be made as and when deemed beneficial from time to time, however aggregate investment in SRVI shall not exceed the limit of 5% of the total paid-up share capital of SRVI.*
- v. *Theoretically, there are as many as six persons who can place orders on behalf of the Respondent to the broker. However, to avoid any kind of inconvenience and having the technical knowledge, practically the CFO places the order to the Broker. The CFO is also solely responsible to liaise with the broker.*
- vi. *The IC gives a blanket approval during the meeting for Investment in the particular scrip, however, the timings and other specifications are communicated by the CFO in consultation with the IC. However, this consultation is executed informally/ verbally and no record of the same has ever been maintained.*
- vii. *SRVI has implemented Oracle system and usually, the financial results are available with the CFO after ten days of the close of the financial period. So practically, the draft of the*



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half yearly financial results of SRVI for the period ending June 2014 was available with the CFO by July 10, 2014.

- viii. *Had the CFO have malefide intention for disclosing the inside information pertaining to the financial results of SRVI to the Respondent, he would have done that far earlier when the share price was moving around Rs. 510 in July 2014.*
- ix. *The Respondent has never indulged in day trading and has held the positions as strategic investments.*
- x. *The CFO has never obtained any personal benefit from this transaction.*
- xi. *The Authorized Representative of the Respondent prayed that keeping in view the outstanding professional repute of the Respondent and his past track of compliance to the Rules and Regulations, the issued SCN be withdrawn.*

17 Subsequently, the Commission directed the Authorized Representative to provide the details of the Authorized signatory for the Respondent in relation to the Banks and copy of audited financial statements of the Representative.

18 The written response of the Authorized Representative of the Respondent dated January 30, 2015 was received, relevant portion of the response is given below:

- i. The Investment details of the Fund show that total Investment of the Fund is approximately Rs. 1,127.96 million out of which Investment worth Rs. 369.983 million is in the scrip of SRVI as of August 31, 2014.
- ii. Certified True Copy passed by the Board of Trustees of the Respondent dated January 23, 2015 vide which the name of the CFO was omitted from the list of the authorized persons to place the orders in relation to buying and selling of shares on behalf of the Fund.
- iii. Copy of Minutes Board of Trustee held on January 23, 2015.



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- 19 Subsequently, the authorized representative of the Respondent vide letter dated February 09, 2015 provided the Audited Financial Statements for the period ending December 31, 2012 and December 31, 2013 and copy of the complete Bank Account Opening Form of the Respondent.
- 20 The review of the Bank Account Opening Form of the Respondent indicated following information:
- i. The name of the CFO is given in the list of authorized persons to operate the bank account of the Fund.
 - ii. The CFO has also been designated as the contact person of the Fund. The specimen signature card of the CFO is also attached with the Bank Account Opening Form of the Respondent.
 - iii. The copy of the Board Resolution of the Respondent passed by the Trustees attached with the Bank Account Opening Form narrates that the Bank of the Respondent will honor whether the said account be in credit or not, all cheques, Bill of exchange, Drafts, Promissory Notes or otherwise drawn, accepted or made on the behalf of the Trust which will be jointly signed by any two of the list which includes all the Trustees and the CFO.
- 21 I have thoroughly analyzed and examined the facts, evidence and documents on record, in addition to the written replies to SCN and assertions made by the Respondent and its Authorized Representative during the hearing and my findings on the issues are as follows:
- i. On review of the arguments made both in written and verbal form, it is noted that the Respondent being the CFO falls under the definition of Insider as defined under section 15C(1a) of the Ordinance as he was CFO of SRVI at the time of purchase of aforementioned shares by the Respondent.
 - ii. The Authorized Representative in its written reply and during the course of hearing contended that the financial results of the Company are predictable as it was mentioned in



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the Directors' Report 2014 that financial performance of the company is expected to improve in the coming quarter. In support of his arguments, the Authorized Representative provided copies of various Research Reports which were in the previous quarter predicting the higher share price of the scrip. The review of Research Reports provided by the Authorized Representative showed that the analysts' expectation regarding final results of the Company was in line with the actual results. However, there is difference between the "anticipated information" and the "information-in-hand" and the probability of the acting on the basis of certain information-in-hand is much higher than anticipated information, owing to fewer level risk for investment. The Authorized Representative admitted during the course of hearing that the CFO was in possession of the material information relating to financial results of the Company far prior than the purchase of the said shares by the Respondent.

- iii. During the hearing and in its written reply the Authorized Representative acknowledged that the CFO was in possession of financial results of the SRVI for the half year ended June 2014 in his capacity as CFO of SRVI before the purchase of shares by the Respondent.
- iv. The Respondent and the Authorized Representative in its written reply and during the course of hearing stated that the members of IC independently took the decision to purchase the shares of the Company. In this context copy of the minutes of the IC dated June 28, 2014 was provided during which the decision for purchase of shares of SRVI was taken. The minutes clearly suggest the investment decision of IC was to invest in the scrip of SRVI upto a maximum of Rs. 40 Million. Further, it narrated that investment and trading in the scrip of SRVI will be made as and when deemed beneficial from time to time. Further, the Authorized Representative during the course of hearing submitted that a blanket approval for investment is given by the IC, and the decision for trading is done from time to time in consultation of IC. This implied that the CFO being the relevant



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authority to the subject had significant influence on the investment/trading decisions of the Respondent.

- v. The banking information of the Respondent shows that the CFO is one of the authorized signatories of the Fund who are authorized to deal in all the transactions relating to the payments and receipts of the Respondent. This shows that the CFO has been significantly involved in the banking deals of the Respondent and was authorized to transact on the behalf of the Respondent.
- vi. The Authorized Representative of the Respondent has agreed that the CFO was an insider to SRVI and possessed inside information pertaining to the financial results of the Company by virtue of his position as CFO. Further, the financial results of the Company is a very critical and price sensitive information and disclosure of the same casts a significant impact on the share price and volume of the scrip. Having in possession of the said information and acting on the basis of that inside information constitutes the whole pattern of Insider Trading. As referred in written response to the Authorized Representative that it is a natural phenomena that market activity in the scrips is boosted in the days near the closed of the financial period. Therefore, the materiality of this information is indisputably clear and it is the anticipation of changes in earnings of the Company which cause the price fluctuation in the scrip. Therefore, an insider having accurate knowledge about fore-coming financial results of the Company is no way at par with the general investors who are trading on the basis of market reports.
- vii. The Respondent commented that the decision of announcement of cash dividend of 100% can only be taken by the directors and the CFO had no information in this regard before the meeting of BOD on August 28, 2014. However, it is pertinent to mention that CFO submits a complete working on extent of free distributable funds to be paid as dividends to the BOD and is aware of the probable declaration of Dividend to the shareholders.



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- viii. It is pertinent to mention that during the period from August 11, 2014 till August 18, 2014 the Respondent was the highest net buyer in the scrip purchasing 53,400 shares at an average price of Rs. 536,477. The said purchase constitutes approximately 44% of the total market volume. Such aggressive purchase by the Respondent generated unusually high volume in the scrip just before the announcement of the results which in turn would trigger investors' sentiment.
- 22 On review of the arguments, made both in written and verbal form, it is noted that the Respondent admitted a number of points which were raised in the SCN. From the facts of the case mentioned above, it is established that CFO of SRVI by virtue of his position in SRVI was an insider person and had information regarding financial performance of the Company. Simultaneously, the CFO was in liaison with the members of the IC for consultation of favorable dynamics of investment/ trading in the shares of SRVI under the approval umbrella. Further the pattern of trading clearly establishes that the trading by the Respondent was based on inside information. Therefore, the case of insider trading against the Respondent is established on the basis preponderance of evidence and material on record against the Respondent.
- 23 The Respondent is a Provident Fund of renowned institution which holds a reliable reputation in the market and is responsible to safeguard the interest of its members; therefore it attracts a significant responsibility to refrain from the actions which raise conflict of interest. It is noted with deep concern that the Respondent is entrusted with a responsibility to carry out the activities which are strictly abided by the law which it failed to do so. It is the duty of the Trustees of the Respondent to exercise reasonable care skill and diligence in conducting its affairs.
- 24 In light of the above and in exercise of the powers under Section 15 E (1) of the Ordinance, I hereby impose a penalty of Rs. 5,048,546 (Rupees Five Million Forty Eight Thousand Five Hundred and Forty Six only) on the Respondent through its Trustees for contravention of the provision of sub-section (1) of the Section 15A by trading in the shares of SRVI on the basis of inside information. I further direct the Respondent through its Board of Trustees to ensure that

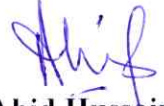


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the operations of the Respondent are closely monitored by them and no trading is done on the basis of inside information in contravention of section 15 A of the Ordinance. Moreover, the Board of Trustees of the Respondent should also ensure that all the decisions of the IC are properly documented and brought to their notice. The investment policies of the Respondent should also be reviewed especially with regard to investment in the shares of SRVI.

- 25 The matter is disposed of in the above manner and the Respondent is directed to deposit the penalty as mentioned in paragraph 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.


Abid Hussain
Director / HOD (MSSID)

Announced on 19.2.2015
Islamabad.