



# PAKISTAN STOCK BROKERS ASSOCIATION

(A company setup under section 42 of the Companies Act 2017)

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## PRESS RELEASE

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### “FILING OF CONSTITUTIONAL PETITION IN THE HIGH COURT OF SINDH BY THE PAKISTAN STOCK BROKERS ASSOCIATION AGAINST FUTURES ELIGIBILITY CRITERIA NOTIFIED BY THE PAKISTAN STOCK EXCHANGE”

Karachi, October 21, 2024 – The Pakistan Stock Brokers Association (PSBA) filed a Constitutional Petition (CP) in July 2021, before the Honorable High Court of Sindh against the Futures Eligibility Criteria (FEC), for the Selection of Securities Eligible for Trading in Deliverable Futures Contract (DFC) and Cash Settled Futures Contract (CSF) Market, as notified by the Pakistan Stock Exchange (PSX) through its notice PSX/N-740 dated June 17, 2021, with prior approval of the Securities and Exchange Commission of Pakistan (SECP) under the Securities Act (SA), 2015.

The PSBA’s petition raised the issues to be decided by the Honorable Court, including but not limited to:

- i) Declare that the Eligibility Notice dated 17.06.2021 to the extent of Criteria 4(i) is illegal, as it was never submitted to the public for comment and even otherwise has been made in contravention of the Constitution and thus void ab initio, and of no legal effect;
- ii) Direct the Respondent Nos. 1 and 2 to immediately withdraw the Criteria 4(i) of the Eligibility Notice dated 17.06.2021 and all actions taken in pursuance thereof;
- iii) Suspend the removal of entities from the approved list of eligible securities as a consequence of Criteria 4(i) of the Eligibility Notice dated 17.06.2021;
- iv) Suspend the operation of Criteria 4(i) of the Eligibility Notice dated 17.06.2021; and
- v) Permanently restrain Respondent Nos. 1 and 2 from acting on the basis of Criteria 4(i) of the Eligibility Notice dated 17.06.2021.

The first hearing of the petition was held on July 15, 2021, during which the Honorable Court very kindly granted an interim order, stating that; *Points raised require consideration. Let in the first instance notices be issued to respondents for a date to be fixed after two weeks. In the meantime only to the extent of later part of criteria 4(i) available at page 109 which reads, “or company has not obtained stay order from court” shall remain inoperative.*

Today, the PSBA is pleased to announce that, **the Honorable Court has allowed the petition and ruled in favor of PSBA on this matter.** The Court addressed the key issues raised in the petition as follows:

1. **Once SECP introduced a new provision, i.e., Criteria 4(i), to the FEC, SECP triggered the precondition of public notice under Section 169(4) of SA, 2015. SECP’s contribution to PSX’s proposed regulations of introducing Criteria 4(i) to the FEC constituted making or amending a regulation under SA, 2015, which mandated the publication of such amendment by SECP. Therefore, it appears that SECP miserably failed to meet the statutory condition set out in Section 169(4) of SA, 2015, i.e. eliciting public opinion on its (SECP’s) draft versions of the PSX Regulations, which included Criteria 4(i) of the FEC.**

*Given the above discussion, we find in the negative that Criteria 4(i) of FEC met the test for introducing amendments to the PSX Regulations under SA, 2015. **We find in favour of the Petitioner that Criteria 4(i) is illegal and unlawful, made in contravention of SA, 2015, and thus of no legal effect.***

2. **It is clear as night and day that the SECP/Commission, with the introduction of Criteria 4(i) of the FEC in the PSX Regulations to the extent of the company obtaining a stay order from court against inquiry/investigation initiated by the Commission, constituted an attempt by SECP to negate and nullify the order(s) of a Court granting a stay of the inquiry/investigation being carried out by the SECP/Commission and impeded the right of due process of law, zeroing out the court orders and the right to access to justice.** From a content perspective, to achieve its objective, SECP could have considered introducing some qualifications or remarks similar to those set out in Regulation 20 of the Companies (Registration Offices) Regulations, 2018, to be mentioned in the PSX Eligibility Notice for situations contemplated in Criteria 4(i) of the PSX Regulations. **However, SECP did not go down this route. Thus, the provision of law impugned by the Petitioner also amounts to an infringement of Fundamental Rights under Articles 9 and 25 as per paragraph 56 of the Baz Muhammad Kakar case (ibid.).**



Furthermore, applying the principles articulated in the Imrana Tiwana case (ibid.), impugned Criteria 4(i) of the FEC of the PSX Regulations<sup>14</sup> is also found unconstitutional. **We have placed the impugned Criteria 4(i) next to the Constitution, and there is no way to reconcile the two, notwithstanding that the impugned Criteria (4(i) also violates both the spirit and letter of the Constitution. Consequently, the contents of Criteria 4(i) of the FEC to the extent of ousting securities of companies which obtain a stay order from a court against any inquiry/investigation initiated by the Commission to be ineligible for trading in the Futures Market is ultra vires of Articles 9 and 25 of the Constitution** read in the light of the cases cited in the Baz Muhammad Kakar case (ibid.) and applying the principles laid down in the Imrana Tiwana case (ibid.). **The impugned Criteria 4(i) of the FEC of the PSX Regulations is hereby struck down as unconstitutional.**

**3.** The Petition, along with all pending applications, **is allowed** in the above terms.

The PSBA remains committed to promoting the development of the stock brokerage industry and protecting the rights of its members. We will continue to work for the betterment of the Capital Market and contribute to the growth of Pakistan's Economy.

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