SEC/Enforcement/2155/2014/741

December 31 , 2014 **<u>By Courier</u>**

Chief Executive Officer
First Securities Services Limited
Al-Raji Complex, Suite G - 702 & 703 (7th Floor)
166-167, Shaheed Syed Nazrul Islam Sarani
Purana Paltan, Dhaka-1000

Subject: <u>Penalty Order: Non compliance of Securities laws in connection with false declaration in the IPO prospectus of FAR Chemical Industries Ltd.</u>

Dear Sir,

Commission's penalty order No. SEC/Enforcement/2155/2014/740 dated December 31., 2014 is enclosed herewith for your kind information and necessary action.

For Bangladesh Securities and Exchange Commission

Mustari Jahan
Deputy Director (Enforcement)

<u>Distribution:</u>
Chief Executive Officer, Dhaka Stock Exchange Limited
Chief Executive Officer, Chittagong Stock Exchange Limited

<u>Copy for information:</u>
P.O to Commissioner (Enforcement), BSEC
P.O to Executive Director (CI), BSEC
P.O to Executive Director (MIS), BSEC
Chairman's office, BSEC

SEC/Enforcement/2155/2014/ **December , 2014**

Order

Whereas, as per section 2 (cc) of the Securities and Exchange Ordinance, 1969 (ORDINANCE No. XVII of 1969) "Commission" means Bangladesh Securities and Exchange Commission constituted under Securities and Exchange Commission Act 1993;

Whereas, as per বিধি 2(ঞ) of the সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (মার্চেন্ট ব্যাংকার ও পোর্টফোলিও ম্যানেজার) বিধিমালা, ১৯৯৬, First Securities Services Limited is an "issue manager "(here in after referred to as "issue manager").

Whereas, on the basis of the observation report of the Commission as to false declaration regarding pending criminal proceeding in the IPO prospectus, a show cause-cum-hearing notice No. SEC/Enforcement/2155/2014/530 Dated: August 14, 2014 was issued to First Securities Services Limited to appear at the hearing accusing for violating Section 18 of the Securities and Exchange Ordinance, 1969 and Rule 19 of the Securities and Exchange Commission (Public Issue) Rules, 2006 by giving false declaration in the due diligence certificate. Hearing has been conducted with the accused. In the show cause-cum-hearing notice following have been mentioned among others;-

Whereas, as per Rule-19 of Securities and Exchange Commission (Public Issue) Rules, 2006, "If any issuer or its representative violates any of the provisions of these Rules or furnishes false, incorrect, misleading information or suppresses any information, the Securities and Exchange Commission may take appropriate action under the Securities and Exchange Ordinance, 1969."

Whereas, as per Section 18 of the Securities and Exchange Ordinance, 1969, "No person shall, in any document, paper, accounts, information or explanation which he is, by or under this Ordinance, required to furnish, or in any application made under this Ordinance, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect in any material particular";

Whereas, as per Rule 8(9)(b) of the Securities and Exchange Commission (Public Issue) Rules, 2006 the issuer requires to declare the matter regarding any conviction of director, officer in a criminal proceeding or any criminal proceeding pending against him in the IPO prospectus;

Whereas, Commission has observed that a case was filed in the Motijheel Police Station by the Commission relating to Right issue matter of R. N Spinning Mills Ltd against **Kim Jong Suk** (Director of R N Spinning Mills Ltd) and **Abid Mustafizur Rahman** (Director of R N Spinning Mills Ltd) who are the Managing Director and Chairman of Far Chemical Industries Limited respectively. So, criminal proceeding is pending against **Kim Jong Suk** and **Abid Mustafizur Rahman**. But in the IPO prospectus they have declared the following;

"No director or officer of FAR Chemical Industries Ltd. was involved in any of the following types of legal proceedings in the last 10 (ten) years."

"b. Any conviction of director, officer in a criminal proceeding or any criminal proceeding pending against him"

Whereas, since criminal proceeding is pending against Kim Jong Suk and Abid Mustafizur Rahman the issuer's aforesaid declared statement is considered as false by the Commission.

Whereas, the issue manager has declared the following among others in its due diligence certificate ;

Quote
'WE CONFIRM THAT
b) all the legal requirements connected with the said issue have been duly complied with;
c) the disclosures made in the draft prospectus are true, fair and adequate to enable the investors to make a well informed decision for investment in the proposed issue.

Unquote;

Whereas, since the issuer has given false disclosures in the IPO prospectus in connection with pending criminal proceeding against Kim Jong Suk and Abid Mustafizur Rahman,the issue managers aforesaid declaration considered as false.

Contravention:

First Securities Services Limited, issue manager has violated Section 18 of the Securities and Exchange Ordinance, 1969 and Rule 19 of the Securities and Exchange Commission (Public Issue) Rules, 2006 by giving false declaration in the due diligence certificate.

Unquote

Whereas, Mr. Reza Humayun Morshed Hayat (CEO, First Securities Services Limited) and Mr.Kazi Saifur Rahman (Ex-CEO, First Securities Services Limited) have attended the hearing. They have submitted an explanation letter no. NIL dated August 24, 2014 to the Commission. In the letter they have stated the following among others;

Quote

It may be recalled that we have furnished our initial reply vide our letter dated 02.06.2014 and apologized for the inadvertent mistake of omitting to declare the litigation information to Right issue matter of R. N. Spinning Mills Ltd against Kim Jong Suk (Director) of R. N. Spinning Mills Ltd and Mr. Abid Mustafizur Rahman (Director) of R. N. Spinning Mills Ltd who are also the Managing Director and Chairman of Far Chemical Industries Ltd which was filed by BSEC itself at Motijheel Police Station. We are further furnishing our reply herein to the show-cause dated 14.08.2014 as per your direction.

We have been providing our services in strict compliance with the provisions of the Securities and Exchange Commission Ordinance, 1969, Securities and Exchange Commission (Public Issue) Rules 2006 and Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Rules 1996 and other provisions and guidelines issued by the Bangladesh Securities and Exchange Commission (**"BSEC"**) from time to time. As mentioned in the letter dated 02.06.2014 furnished by us that while preparing the prospectus of any company and issuing due diligence certificates, we are dependent on the company concerned and documents submitted and information disclosed by them. We endeavor our best to verify the authenticity of the documents furnished by any concerned company before issuing due diligence certificate and submitting the same before the BSEC. However, we couldn't provide the information in the draft prospectus Page no. 51 under "**Involvement of Directors and officers in certain legal proceedings" in clause (b) "Any conviction of director, officer in a criminal proceeding or any criminal proceeding pending against him"** in compliance with the due diligence report issued by us as per the Securities & Exchange Commission (Public Issue) Rules 2006 since we couldn't detect and reflect that information due to the following reasons:

1.0 In this particular occasion Far Chemical Industries Ltd, the Issuer Company, failed to forward any information to us relating to the involvement in litigation of Mr. Abid Mustafizur Rahman and Mr. Kim Jong Suk, Chairman and Managing Director of the Company respectively as per Rule 8(9)(b) of the Securities & Exchange Commission (Public Issue) Rules 2006, which was mandatory for the Issuer Company i.e. Far Chemical Industries Ltd. The BSEC also didn't inform the Issuer Company in writing any such **incompleteness** after submitting the IPO application as per Rule 17(2) of the Securities & Exchange Commission (Public Issue) Rules 2006 and whereby FSSL could ensure compliance of BSEC's directives in this regard (Rule 17(3) of the Securities & Exchange Commission (Public Issue) Rules 2006). **As such FSSL has to rely solely on the papers and documents submitted by the Issuer Company and thus were unable to detect and reflect the information in the draft Prospectus Page no. 51 under the above clause (b).**

It may be recalled upon the receipt of your instruction in this regard and publication of the relevant notification in 4 daily newspapers on 29.05.2014 the Company immediately rectified the above clauses and submitted the same to you. We also advised the Issuer Company in this regard for doing the needful. This explains our bona fide position regarding the inadvertent mistake to state the same in the draft prospectus page number 51.

2.0 It may be kindly recalled also that we have stated in our earlier letter dated June 02, 2014 **that it is very difficult for us to identify the cases of litigation information under the prevailing system since the courts do not maintain any central data base and it is also not possible for us to get access to it without a court order or directive by the government (example: collection of CIB report of the Issuer Company from Bangladesh Bank Ltd by BSEC)**. Thus, it is only possible if our client, the issuer company concerned volunteers this information to us as per requirement of Rule 8(9)(b) of the Securities & Exchange Commission (Public Issue) Rules 2006 while furnishing to us all necessary papers and documents.

In view of the facts and circumstances stated above, you will kindly appreciate our position whereby we were mislead by the issuer company and this omission could occur.

And as such we didn't violate any of the provisions of the rules or furnishes false, incorrect, misleading information or suppresses any information which may attract the Rule-19 of the Securities & Exchange Commission (Public Issue) Rules 2006 for which the Securities and Exchange Commission may take appropriate action against us (FSSL) under the Section 22 of the Securities and Exchange Ordinance, 1969.

And as such our due diligence doesn’t also attract the Section 18 of the Securities and Exchange Ordinance, 1969 which is as follows:

“No person shall, in any document, paper, accounts, information or explanation which he is, by or under this Ordinance, required to furnish, or in any application made under this Ordinance, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect in any material particular”

On being informed by you and also the Issuer Company about the criminal proceedings against the directors Mr. Abid Mustafizur Rahman and Mr. Kim Jong Suk of RN Spinning Mills Ltd who are also the Chairman and Managing Director of Far Chemical Industries Ltd respectively, we have already cancelled our issue management agreement with M. L. Dyeing Ltd, the related company of RN Spinning Mills Ltd considering the facts that there could be similar discrepancies also in that case. This clearly reflects our good intention to be more diligent about the information by our clients.

As this is a case of good faith and particularly because of the fact that while dealing with many successful IPOs till date, we have never committed any such mistake willfully and thereby appeal to your good self to kindly consider the matter leniently to enable us to continue functioning as Issue Manager and allow us to provide services without imposing any penalty.

It is to be noted that like banks and financial institutions (NBFIs) where Bangladesh Bank Ltd being the regulatory body is continuously guiding and training its authorized dealers to tackle with improvements of several due diligences of banks/NBFIs for its customers and continuously upgrading its KYC (Know Your Customers) which is compulsory for the authorized dealers. The authorized dealers also duly authorized by Bangladesh Bank Ltd to collect compulsorily all essential authorization from its clients for re-checking the documents and information provided by the clients from its source before giving any financial facilities or even opening a bank account. Like banks and NBFIs we, the merchant bankers, are working as a bridge between the issuer company and Bangladesh Securities & Exchange Commission (BSEC) to confirm essential due diligences of the issuer company. Thereby, such essential guidelines, training and authorization of BSEC for re-checking the essential documents of the issuer company from its source may be more helpful to confirm the truthfulness and accuracy of those documents and information.

We also take this opportunity to assure you further that we will give our very best effort to be more vigilant in the future while preparing prospectus and issuing due diligence certificates relating to any company for any information and documents on behalf of whom we would be forwarding the prospectus for your kind approval.

Under the facts and circumstances stated above, we hereby sincerely apologize for the inadvertent mistake committed by us due to the omission of the Issuer Company to disclose information to you as required and humbly pray again to take the matter leniently and allow us to provide an opportunity to offer our services to the clients without imposing any penalty.

Unquote

Whereas, Commission has observed that a case was filed in the Motijheel Police Station by the Commission relating to Right issue matter of R. N Spinning Mills Ltd against **Kim Jong Suk** (Director of R N Spinning Mills Ltd) and **Abid Mustafizur Rahman** (Director of R N Spinning Mills Ltd) who are the Managing Director and Chairman of Far Chemical Industries Limited respectively. Till now there is a criminal proceeding pending against **Kim Jong Suk** and **Abid Mustafizur Rahman**. But in the IPO prospectus they have declared the following;

"No director or officer of FAR Chemical Industries Ltd. was involved in any of the following types of legal proceedings in the last 10 (ten) years."

"b. Any conviction of director, officer in a criminal proceeding or any criminal proceeding pending against him"

Where as, criminal proceeding is pending against Kim Jong Suk and Abid Mustafizur Rahman the issuer's aforesaid declared statement is considered as false by the Commission.

Since criminal proceeding is pending against Kim Jong Suk and Abid Mustafizur Rahman the issuer's aforesaid declared statement is considered as false by the Commission.

The issue manager has declared the following among others in its due diligence certificate ;

Quote

‘WE CONFIRM THAT
b) all the legal requirements connected with the said issue have been duly complied with;

c) the disclosures made in the draft prospectus are true, fair and adequate to enable the investors to make a well informed decision for investment in the proposed issue.

Unquote;

Where as, the issuer has given false disclosures in the IPO prospectus in connection with pending criminal proceeding against Kim Jong Suk and Abid Mustafizur Rahman, the issue managers aforesaid declaration considered as false.

Where as, they have explained that Commission did not inform the issuer in writing regarding the incompleteness after getting the IPO application. If Commission did it, they could rectify the mistake. They have to rely solely on the papers and documents submitted by the Issuer Company and thus were unable to detect and reflect the information in the draft Prospectus Page no. 51 under the above clause (b).

Whereas, they have stated that it is very difficult for them to identify the cases of litigation information under the prevailing system since the courts do not maintain any central data base and it is also not possible for them to get access to it without a court order or directive by the government.

Whereas, Commission is of the opinion that their explanations have no merit. Because they could know the information regarding pending criminal proceeding filed by Commission against the directors of the issuer by writing the Commission. On the basis of papers due diligence can not be given. Because as per due diligence certificate they need to verify independently the statements concerning objects of the issue and the contents of the documents and other materials furnished by the issuer company.

Whereas, the Commission has not accepted their explanation regarding the contravention and Commission is of the opinion that First Securities Services Limited, issue manager has violated Section 18 of the Securities and Exchange Ordinance, 1969 and Rule 19 of the Securities and Exchange Commission (Public Issue) Rules, 2006 advertently by giving false declaration in the due diligence certificate.

Whereas, the issue manager's aforesaid activities are tantamount to non-compliance of securities law that appears deliberate and clear contravention of Section 18 of the Securities and Exchange Ordinance, 1969 and Rule-19 of Securities and Exchange Commission (Public Issue)

Rules, 2006 attracting penal provision of section 22 of the Securities and Exchange Ordinance, 1969.

Whereas, to protect the discipline and transparency of the capital market along with its development the Commission deems it appropriate and necessary to impose penalty upon First Securities Services Limited (issue manager).

Now, therefore, Bangladesh Securities and Exchange Commission, in exercise of the power conferred by section 22 (amended by the Securities and Exchange (Amendment) Act, 2000) of the Securities and Exchange Ordinance, 1969 (XVII of 1969) hereby imposes penalty for Tk.05.00 (Tk.Five) Lac upon First Securities Services Limited (issue manager) which is to be deposited to the Commission in the form of Bank Draft/Payorder favouring 'Bangladesh Securities and Exchange Commission' within 15 days from the date of issuance of this order.

By order of the Bangladesh Securities and Exchange Commission

Professor Dr. M. Khairul Hossain
Chairman

<u>Distribution</u>
Managing Director/CEO
First Securities Services Limited
Al-Raji Complex, Suite G - 702 & 703 (7th Floor)
166-167, Shaheed Syed Nazrul Islam Sarani, Purana Paltan, Dhaka-1000