



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 9 of 2020

M/s. Kashf Foundation

Versus

...Appellant

Executive Director Adjudication

...Respondent

Date of hearing:

January 16, 2025

### Present:

For the Appellant:

1. Saira Soofi (Authorized Representative)
2. Mehek Zafar
3. Shehla Sattar

For the Respondent:

1. Asima Wajid, Additional Joint Director, Adjudication Department-I, Adjudication Division, SECP
2. Sohail Qadri, Director/HOD, Adjudication Department-I, Adjudication Division, SECP
3. Naveed Iqbal, Deputy Director, Adjudication Department-I, Adjudication Division, SECP

### ORDER

1. This Order shall dispose of Appeal No. 9 of 2020 filed by Kashf Foundation (the "Appellant") against the Order dated December 24, 2019 (the "Impugned Order") passed by the Executive Director, Adjudication-I, Securities and Exchange Commission of



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Pakistan (the "Respondent") under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act") and Section 282J(l) read with Section 282(M)(l) of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that the Appellant, a company incorporated under Section 42 of the Companies Act, 2017, is licensed to operate as a non-bank microfinance company. The Securities and Exchange Commission of Pakistan (the "Commission") conducted an Inspection on October 11, 2019 ("the Inspection"), to assess its compliance with the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the "AML/CFT Regulations"). During the Inspection, several violations were identified, including the formation of business relationships with individuals linked to proscribed persons in violation of Regulation 6(5a), failure to comply with customer due diligence (CDD) requirements under Regulation 6(3)(a), inadequate monitoring of relationships as per Regulation 13(7), failure to verify CNICs through the NADRA Verisys system as mandated by Regulation 6(4), and insufficient categorization of customers into high or low-risk categories as required by Regulation 6(8). In consequence to these findings, the SECP issued a Show-Cause Notice ("SCN") to the Appellant on November 29, 2019. The Appellant submitted its response on December 6, 2019, and a hearing was held on December 20, 2019. Following the hearing, the SECP imposed a penalty of Rs. 1,000,000 on the Appellant for the alleged violations.
3. The Appellant filed this Appeal before the Appellate Bench (the "Bench"), *inter alia*, on the grounds that the Respondent erred in holding that the Appellant was in violation of various provisions of the AML/CFT Regulations. Firstly, the Appellant argued that it was not in violation of Regulation 6(5a), as it has never formed a business relationship with any proscribed person or their associates/facilitators. The Appellant clarified that while eight individuals were identified as proscribed persons, they were not customers or clients of the Appellant, but rather PDC providers or nominees. The Appellant asserted that these individuals did not fall within the scope of the term "associates" as understood in the AML/CFT Regulations, particularly since the AML/CFT Regulations do not provide a clear definition of the term "associate." The Appellant further highlighted that despite not



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being in violation of Regulation 6(5a), it is in the process of updating its AML/CFT policy to prevent any future business relationships with proscribed persons or their associates.

4. Regarding Regulation 6(3)(a), the Appellant contended that it had fully complied with customer due diligence requirements by verifying the identity of all its customers, who are natural persons. The Appellant explained that all customers' CNICs were verified both through physical meetings and real-time matching with official records. Additionally, the Appellant refuted the Respondent's claim that it failed to identify beneficial owners, asserting that its customers were not controlled by any third party and that the loans were directly disbursed to the customers.
5. On the issue regarding Regulation 13(7), the Appellant emphasized that it regularly monitors its relationships with clients and conducts annual assessments to ensure compliance with AML/CFT requirements. The Appellant also asserted that if any relationship with a proscribed person were identified, immediate steps were taken, including reporting to the Commission. The Appellant stated that it cannot be held in violation of Regulation 13(7) without clear evidence of knowledge regarding its clients' proscribed status.
6. In response to the claim of non-compliance with Regulation 6(4), the Appellant explained that it had every intention of complying with the NADRA Verisys requirement. The Appellant submitted that it sought to reduce costs through the Pakistan Microfinance Network and was awaiting a decision on this matter. The Appellant emphasised that it had applied for the NADRA Verisys system after the Commission's order, and argued that penalizing the Appellant for not fully implementing the system, given the ongoing discussions with the Commission, was unreasonable.
7. Regarding Regulation 6(8), the Appellant contended that it had categorized all customers as low risk, in compliance with Regulation 11(2)(g), which allows for simplified due diligence for certain low-risk financial services. The Appellant argued that none of its customers exhibited the characteristics outlined in Regulation 9(2) that would classify them as 'high risk'. The Appellant further emphasized its ongoing monitoring and quarterly audits to assess customer risk and ensure that loans are used for their intended purposes.



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8. Finally, the Appellant denied the allegation of violating Rule 7(1)(g) of the NBFC (Establishment and Regulation) Rules, 2003, asserting that it had followed all relevant regulations concerning money laundering and terrorist financing. In light of these arguments, the Appellant requested that the penalty be reconsidered, as it had demonstrated compliance and transparency throughout the process.
9. The Respondent refuted the Appellant's claims, asserting that the Appellant's arguments failed to address the substantive regulatory violations identified during the Inspection. The Respondent emphasized that the adjudicating authority thoroughly examined the case facts, documentary evidence, and the Appellant's responses before arriving at its conclusions. The Respondent argued that the Appellant's claim that PDC Providers and nominees did not qualify as "associates/facilitators" under Regulation 6(5a) was without merit. The Respondent contended that this reflected a fundamental misunderstanding of the AML/CFT Regulations on the Appellant's part. However, the Respondent acknowledged that, despite this initial oversight, the Appellant eventually recognized its obligation to report the identified proscribed individuals and took prompt corrective actions, including reporting them and recalling the affected loans.
10. Furthermore, the Respondent highlighted that, despite the Appellant's attempt to clarify its position, it failed to monitor its relationships adequately, especially with respect to individuals defined under Regulation 6(5a), including proscribed persons who acted as co-borrowers or nominees. The Respondent maintained that the Appellant's failure to identify and act on these relationships led to ineffective monitoring, thus violating Regulation 13(7). On the issue of CNIC verification, the Respondent argued that the Appellant's decision to delay the NADRA Verisys system implementation due to cost concerns was irresponsible, given the exposure to risks related to proscribed individuals. Additionally, the Respondent rejected the Appellant's justification of categorizing all customers as 'low-risk', asserting that such categorization based solely on loan size was insufficient and failed to adhere to the 'risk-based approach' required under the Regulations. Finally, the Respondent affirmed that the Appellant's violations of multiple regulations, including Regulations 6(4), 6(5a), 6(3)(a), and 6(8), along with Rule 7(1)(g) of the NBFC Rules, were substantiated through the adjudication process. The Respondent emphasised that the



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penalty imposed was warranted and in line with the severity of the breaches, and that the Appellant's corrective actions, while noted, did not absolve the breach or negate the need for a penalty.

11. After careful consideration of the arguments presented by both the Appellant and the Respondent, the Bench notes that while the Appellant has made significant efforts to comply with the AML/CFT Regulations, including monitoring its customer relationships and reporting identified issues, several deficiencies remain in its compliance practices. These include failure to appropriately categorize customers, verify CNICs through the NADRA Verisys system, and monitor business relationships with associates of proscribed individuals as required by the AML/CFT Regulations. However, the Bench also acknowledges that the Appellant took proactive steps to correct these shortcomings, including updating its policies, reporting proscribed individuals, and recalling loans associated with such persons. The Bench appreciates that the Appellant demonstrated good faith by taking corrective actions as soon as the issues were identified, highlighting its commitment to regulatory compliance.
12. While the Respondent asserted that the violations were significant, the Bench is of the view that the Appellant's non-compliance, although serious, was not deliberate or intentional and the deficiencies identified were primarily technical in nature, and in isolation, they did not present an immediate or substantial risk to the financial system or cause financial harm. Additionally, the Bench acknowledges that the Appellant took prompt corrective actions upon being informed of these issues, including voluntarily disclosing the violations and implementing corrective measures, which demonstrates that the infractions were not indicative of a broader systemic failure. As such, the Bench finds that the penalty of Rs. 1,000,000 initially imposed is disproportionate to the severity and scope of the violations, particularly given the Appellant's timely and proactive steps to remedy the situation.
13. In light of the Appellant's efforts to rectify the deficiencies and its overall commitment to regulatory compliance, the Bench finds it appropriate to reduce the penalty to Rs. 350,000. This reduction reflects both the minor nature of the violations in the broader context of the Appellant's operations and its prompt corrective measures. Accordingly, the Appeal is disposed of in the above terms, with no order as to costs.



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**(Abdul Rehman Warraich)**  
Commissioner

**(Mujtaba Ahmad Lodhi)**  
Commissioner

Announced on: **21 FEB 2025**