BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 37 of 2019

Taurus Securities Limited

...Appellant

Versus

Commissioner (Securities Market Division),
Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing: 03/09/2020

Present:

For the Appellant:

i. Mr. Syed Waqar-ul-Hassan (CFO & Company Secretary)
ii. Mr. Iqbal Rasheed (Chief Internal Auditor)
iii. Ms. Aaliya K. Dossa (Director Research)
iv. Ms. Anum Sajjad (Head of Compliance)
v. Mr. Abdul Ahad Nadeem, Counsel, (Mohsin Tayebaly & Co.)

For the Respondent:

i. Mr. Osman Syed, Joint Director (Adjudication-1)
ii. Mr. Muhammad Faisal, Assistant Director (Adjudication-1)

ORDER

1. This Order is passed in the matter of Appeal No.37 of 2019 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 (the SECP Act) against the order dated 03/06/19 (the Impugned Order) passed by Commissioner, Securities Market Division (the Respondent).

2. The brief facts of the case are that Taurus Securities Limited (the Appellant) is a Trading Rights Entitlement Certificate holder of the Pakistan Stock Exchange Limited and licensed as a securities broker under the Securities Act, 2015. An inspection was conducted by the Securities and Exchange Commission of Pakistan (the Commission) which revealed that the Appellant was non-compliant

with the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the AML Regulations). Keeping in view that the AML Regulations were newly promulgated at the time of inspection, the Commission ordered to conduct a follow up review (the Review) to assess the Appellant's compliance with the AML Regulations. The Review, inter alia, revealed the following:

i. Regulation 3(1)(a) which requires a regulated person to take appropriate steps to identify, assess and understand, its money laundering and terrorism financing risks in relation to its customers. The Appellant had incorrectly rated three of its clients as low risk, out of a sample size of twenty-five (25) clients, despite the fact that these clients were non-resident.

ii. The Appellant did not have a system that generated alerts one month before the expiry of CNICs of its customers. Moreover, shortcomings in Customer Due Diligence (the CDD) of two of the following customers were observed:

Client 1: At one part of the account opening form, physical appearance of the client had been marked. On the other hand, it had been marked "non face to face" reflecting that the Appellant had not been present at the time of account opening. Furthermore, the Appellant had not obtained information relating to client's knowledge of the market and source of funds of the joint account holder.

Client 2: At one part it was disclosed that the client was doing business while on the other part it had been disclosed that the client was employed.

The above reflected that the Appellant, *prima facie*, violated Regulation 6 of the AML Regulations which require a regulated person to apply CDD measures when establishing business relationship with a customer.

iii. The Appellant did not have a mechanism for ongoing monitoring of its clients in contravention of Regulation 13 of the AML Regulations which requires that all business relations with customers shall be monitored on an ongoing basis to ensure that the transactions are consistent with the regulated person's knowledge of the customer.

iv. Circular 10 of 2017 (the Circular) required the Appellant to maintain record of its clients who had traded in excess of Rs 5 million during a month. The Appellant, however, had not maintained record of two of its clients whose net traded value during the month of November 2018 was greater than Rs 5 million. Therefore, the Appellant prima facie acted in contravention of the AML Regulations.

3. The Show-Cause Notice dated 02/05/19 (the SCN) under section 40A of the SECP Act was served on the Appellant. The Appellant submitted its written reply vide its letter dated 07/05/19 and hearing in the matter was held on 09/05/19. Mr. Syed Zain Hussain (the CEO), Mr. Syed Waqar ul Hassain (the Company Secretary) and Mr. Iqbal Rasheed (the Chief Internal Auditor) appeared for and on behalf of the Appellant and reiterated their written submissions.

4. The Respondent held that justification along with evidence provided by the Appellant with regard to incorrect rating of three of the Appellant's clients was satisfactory, therefore, it would be unjust to hold the Appellant responsible on this count. Furthermore, with regard to non-compliance of the Circular, the Respondent held that he was not holding the Appellant accountable as the Circular had been repealed. However, the evidence provided by the Appellant in regard to obtaining renewed CNICs of eight (8) of their clients as well as evidence provided in regard to the CDD process of two (2) of their clients was not satisfactory, therefore, alleged contraventions of the provisions of AML Regulations had been established. The Respondent, in terms of powers under section 40A of the SECP Act imposed a penalty of Rs. 200,000 under section 40A of the SECP Act on the Appellant. The Appellant was further advised to examine its AML/CFT policy & procedures and the accounts of its clients to ensure that the requirements contained in the AML Regulations are met in letter and spirit. Furthermore, the Respondent directed the Appellant that a report in this regard be submitted to the Commission within sixty (60) days of the date of the Impugned Order.

5. The Appellant preferred the appeal *inter alia* on the following grounds:
   a) The Respondent failed to appreciate that the Appellant has an in house mechanism for monitoring expiry of CNICs of their clients which is done on a fortnightly basis and the information is acquired from the Verisys system provided by National Database and Registration Authority (the NADRA). The Respondent erred in observing that the Appellant had only sent letters to its clients after the Review was initiated by the Commission and that no reasonable steps were taken to obtain renewed CNICs. The Respondent also failed to consider that letters dated 12/03/19 were reminders and the Appellant had already sent letters in July 2018 and November 2018 seeking renewed CNICs from their clients.
   b) The Respondent failed to appreciate that the Appellant has been trying to automate its CNIC expiry monitoring system and had approached vendors approved by the PSX for the same,

however, the vendors had failed to accommodate and provide the necessary software due to lack of resources at their end. This matter was duly conveyed to the Respondent vide letter of the Appellant dated 02/05/19, however, no response was received and the Respondent instead penalized the Appellant.

c) The Respondent has erred in observing that the ongoing monitoring of clients should not only be trade specific but should also take into account the value of trade as the same is not highlighted in any law, rule or regulation and is also unfair to the Appellant as they had not been informed in advance to monitor both value and volume.

d) The Appellant has for the last many years monitored the volume as well as the transactions and a report based on the same is made. The said report had also been shared with the Commission on various occasions. The Appellant included in its report all transactions of share volume of 100,000 and above and further monitored transactions of share value of Rs 5 million or above for individuals. In addition, the Appellant has also done script wise monitoring as well as compared transaction history with the source of income. Moreover, the Appellant also carried out deposits-based monitoring in which the Appellant monitored the source of funds which corroborate the source of income of the respective client as well as review of delivery channel.

e) The Respondent had observed shortcoming in the CDD process of two of Appellant's clients. As far as Client No.1 is concerned, he was physically present at the time of account opening while a checkmark showed that he was a non-face to face client. The Appellant had submitted its response that the account of Client No.1 was a joint account and he was physically present at the time of account opening and also known to its Head of Business Development for 15 years while on checkmark it had been mistakenly ticked as non-face to face. Furthermore, for Client 2, he was marked as salaried individual while the Federal Board of Revenue (the FBR) record showed a contradiction. The Appellant had taken the said client's visiting card where his designation was mentioned as "Group Manager" which substantiated his employment with Jubilee Life Insurance. Furthermore, Client No. 2 also marked himself in service category in the CDC Sub-Account Opening Form and at the time of account opening, as per KYC Procedures, confirmation was also obtained on recorded line from the respective client by the Appellant's Compliance Department.

f) The Impugned Order failed to point out a contravention of any of the AML Regulations under consideration in the SCN and the penalty imposed is arbitrary and illegal. The Respondent has unequivocally violated the provisions of section 24-A of the General Clauses Act, 1897

as the powers conferred on the Respondent have not been exercised reasonably, fairly or justly. The Respondent failed to appreciate the fact that the Appellant is in compliance of the regulatory framework and more specifically the provisions mentioned by the Respondent. The Impugned Order being contrary to the law and fact is liable to be set aside.

6. The Respondent rebutted the arguments of the Appellant *inter alia* on the following grounds:
   a) The Appellant was afforded adequate opportunity of hearing and all relevant facts and law were duly considered during the proceedings. The Appellant should have followed the procedure laid down in AML Regulations. The Appellant had contended that Client No.1 was physically present at the time of account opening and CDD measures were applied, however, the additional checkmark contradicting the client's physical presence at the time of opening account was still an error and further no information was obtained relating to client's knowledge of the market and source of funds of the joint account holder. In regard to Client No. 2, the information provided by the client was duly recorded in the CDD form i.e. salaried individual, however, when the contradiction with the FBR record was highlighted, the said client was required to clarify its position vide letter dated 26/03/19. The evidence submitted by the Appellant, however, in support of its claim was not satisfactory and reflected that the same discrepancy had also been highlighted in 2017 when online tax verification was performed.
   b) It had been revealed from the Review Period of the Appellant that CNICs of 12 of its clients had expired. The Appellant had issued letters to nine (9) clients in this regard. Moreover, letters to eight (8) of these clients were issued on 12/03/19 only after the Review was initiated. Therefore, the Appellant had failed to justify that it had taken reasonable measures to obtain renewed CNICs of eight (8) of their clients and was found to be non-compliant during Review Period. Furthermore, the Appellant informed that they are in the process of automation of monitoring system. The Appellant, however, could not present any practical mechanism, system or design which would help them monitor their clients on an ongoing basis in the absence of information such as source of funds and expected level of investment. The monitoring system should not only be trade specific, rather, it should also take value of trades into account. Therefore, it can be construed that no such compliance was made in this regard. Furthermore, the Respondent did not provide any justification for its failure to maintain record of clients in November 2018 when the net traded value during the month

exceeded Rs 5 million. The said Circular has now been repealed, therefore, the Respondent did not hold the Appellant liable on this count.

7. We have heard the parties i.e. the Appellant and the Respondent. We are of the view that the Appellant has not satisfied the Bench that CDD was done in the case of two clients highlighted in the Impugned Order. While we agree that there could be an error in the additional checkmark box on the account opening form in the case of Client No.1, however, still no effort was made to obtain information relating to the client's knowledge of the market and source of funds of the joint account holder. As for Client No.2, the Appellant should have not just taken the visiting card of the client but also should have asked for a salary or employer's slip to establish his source of funds to confirm whether the client was indeed a salaried individual. The Appellant also clearly did not have a system that generated alerts one month before the expiry of CNICs of its customers. The Appellant's contention, that they had been trying to automate its CNIC expiry monitoring system but the vendors failed to accommodate, is not a sufficient explanation for failing to have an up-to-date system. The Appellant could have approached a different vendor which had the resources to provide the necessary software, therefore, it could still be done. Furthermore, letters written to clients going as far back as July and November 2018 were not provided to the Respondent at the time of inspection and in any case do not satisfy this Bench on meeting the regulatory requirements as there is no way to establish whether those letters were sent before or after expiry of the CNICs. Furthermore, as far as monitoring of the volume and value of trade is concerned, the Respondent has already acknowledged that the Circular has been repealed and the Appellant has not been penalized for it. Therefore, we will not further adjudicate on this issue as it is no longer a point of contention.

8. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to costs.

Shaukat Hussain
Commissioner (CCD, Insurance)

Farrukh H. Sabzwari
Commissioner (SCD)

Announced on: 05 NOV 2020