



# Securities and Exchange Commission of Pakistan

## **BEFORE THE APPELLATE BENCH**

In the matter of

**Appeal No. 51 of 2020**

M/s. First Equity Modaraba

Appellant

versus

Commissioner (SMD) SECP

Respondent

**Date of hearing:**

May 29, 2025

**Present:**

For the Appellant:

1. Mr. Muhammad Adil, Chief Executive Officer
2. Mr. Qazi Obaid Ullah, Chief Financial Officer

For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication Division, SECP
2. Mr. Muhammad Faisal, Deputy Director, Adjudication Department-I, SECP

## **ORDER**

1. This Order shall dispose of the Appeal filed by First Equity Modaraba (the "Appellant") against the Order dated April 24, 2020 (the "Impugned Order") passed by the Commissioner (SMD), Securities and Exchange Commission of Pakistan (the "Respondent") issued under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act") and Section 150 of the Securities Act, 2015 (the "Securities Act").
2. The brief facts of the case are that the Appellant is a Trading Rights Entitlement Certificate (TREC) holder of the Pakistan Stock Exchange Limited (the "PSX") and is licensed to operate as a securities broker under the Securities Act. A thematic review (the "Review") of the Appellant's operations was conducted by the SECP to assess compliance with the requirements of the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the "AML Regulations"). The findings of the Review, communicated to the Appellant on July 13, 2019, indicated various contraventions of the AML Regulations and the Securities Brokers (Licensing and Operations)



## Securities and Exchange Commission of Pakistan

Regulations, 2016 (the "Licensing Regulations"). These included, *inter alia*, deficiencies in the AML/CFT policy concerning Enhanced Due Diligence (EDD) and employee training, inadequate compliance and internal audit functions, and failure to perform EDD for high-risk clients. Following the issuance of the SCN and receipt of the Respondent's written submissions, a hearing was held on December 4, 2019, during which the Appellant was represented by its Chief Executive Officer and Chief Financial Officer. After considering the available record and hearing submissions, the Respondent imposed a penalty of Rs. 200,000/= and Rs. 50,000/= in terms of powers conferred under Section 40A of the Act and Section 150 of the Securities Act respectively, for the established violations.

3. The Appellant filed an Appeal before the Appellate Bench (the "Bench"), *inter alia*, on the grounds that the Impugned Order stands vitiated for having been passed in breach of the fundamental principles of natural justice. It was contended that no meaningful opportunity of hearing was provided before the imposition of the monetary penalty, depriving the Appellant of a fair chance to present its case. The Appellant argues that such procedural infirmity strikes at the root of the adjudication process and renders the entire proceedings *coram non judice*.
4. It was further contended by the Appellant that the Impugned Order reflected a pre-determined outcome rather than a reasoned adjudication. It was submitted that the Respondent failed to objectively consider the Appellant's written submissions and supporting documentation. Instead, the findings largely reiterated the contents of the Show Cause Notice without offering a cogent analysis of the facts or addressing the specific explanations offered by the Appellant. This, the Appellant argued, constitutes a failure to apply judicial mind and violated settled legal norms requiring decisions to be based on an impartial and thorough evaluation of the record.
5. The Appellant maintained that the conclusions drawn in the Impugned Order are based on assumptions and generalizations rather than concrete evidence. It was submitted that the alleged non-compliances were either minor procedural lapses or had already been rectified during the course of proceedings. The Appellant contended that penalizing a regulated entity for such technical deviations, particularly when proactive remedial steps were taken, amounts to excessive and disproportionate enforcement, contrary to the principles of fairness and equity.
6. Additionally, it was submitted that the finding of non-compliance under Regulation 29(5) of the Licensing Regulations was factually and legally flawed, contending that the Compliance Officer had been discharging her responsibilities in accordance with Regulation 29(3), through timely reporting and ongoing monitoring and the decision to submit quarterly instead of monthly reports was based on operational considerations and duly approved by the Board of Directors. The Appellant also asserted that



## Securities and Exchange Commission of Pakistan

it had an independent and functioning internal audit framework, wherein the Head of Internal Audit regularly submitted AML/CFT review reports to the Audit Committee in line with regulatory requirements.

7. In view of the above, the Appellant submitted that the cumulative effect of procedural irregularities, factual misappreciation, and disproportionate penalty, the Appellant contended, rendered the Impugned Order untenable in law and, therefore, prayed that the Impugned Order be recalled and set aside in the interest of justice and fair regulatory process.
8. The Respondent refuted the assertions submitted by the Appellant with regard to lack of fair and reasonable opportunity of hearing prior to the issuance of the Impugned Order. He submitted that a formal hearing was held on December 4, 2019, attended by the Appellant's Chief Executive Officer and Chief Financial Officer, a fact admitted by the Appellant in its own pleadings and thus, the allegation of being condemned unheard is factually incorrect and contradictory to the record.
9. It was further maintained by the Respondent that the Impugned Order was passed after careful consideration of the facts, documentary evidence, and explanations submitted by the Appellant which was evidenced by the fact that out of six initial allegations mentioned in the Show Cause Notice, the Respondent dropped proceedings on four after accepting the Appellant's submissions, and proceeded on only two substantiated violations. The Respondent submitted that this clearly reflected a fair, objective, and merit-based adjudication process, devoid of any bias or preconception and that the Impugned Order was grounded in concrete evidence which the Appellant failed to rebut; the Appellant's criticisms amounted to a mere disagreement with the findings rather than a demonstration of legal or factual error.
10. The Respondent further clarified that subsequent compliance by the Appellant does not nullify past violations and regulatory obligations under the AML/CFT and Licensing Regulations require strict and timely adherence. And the Appellant's failure to prepare monthly compliance reports, as required under Regulation 29(5), and its admitted practice of filing quarterly reports, even if approved internally, cannot override explicit legal requirements. Likewise, the Respondent explained that the internal audit function, though present, did not independently and adequately assess AML/CFT systems as required, instead relying heavily on compliance reports without providing a critical review as mandated under Regulation 4(d) of the AML Regulations and Regulation 16(9)(e) of the Licensing Regulations.
11. In view of the above, the Respondent maintained that the Appellant's submissions during the proceedings were duly considered but found unconvincing. Further, that the Impugned Order was passed lawfully, based on the facts and regulatory framework, and without discrimination. The Appellant's attempt to now



## Securities and Exchange Commission of Pakistan

raise new grounds is impermissible, having had ample opportunity to present its case. Therefore, the Respondent respectfully prayed that the Appeal be dismissed and the Impugned Order upheld.

12. After careful consideration of the entire matter, the Bench acknowledges the Respondent's submission that the procedural steps taken during the Inspection were consistent with the applicable regulatory framework. While the Appellant did not fully comply with all provisions of the AML and Licensing Regulations, the Bench notes that the Appellant cooperated during the Inspection process and took reasonable steps to address the concerns raised in the SCN.
13. The Bench also observes that the Appellant made commendable efforts to rectify several of the identified deficiencies, particularly with respect to CDD and the documentation of low-risk client categorizations. Although some of these corrective measures were implemented after a delay, the Appellant demonstrated a genuine intent to comply once the issues were brought to its attention. It is further noted that certain violations, such as inadequate documentation of low-risk client status, pertained to historical records rather than deliberate non-compliance.
14. In view of the Appellant's partial cooperation and remedial efforts, the Bench finds the original penalty of Rs. 250,000/= to be excessive and disproportionate to the nature and circumstances of the violations. Accordingly, the Bench considers it just and equitable to reduce the penalty to Rs. 100,000/=, reflecting both the seriousness of the breaches and the mitigating factors presented.
15. Consequently, the Appeal is disposed of, with no order as to costs.

(Abdul Rehman Warraich)  
Commissioner

(Muzaffar Ahmed Mirza)  
Commissioner

Announced on:

**02 JUL 2025**