



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 58 of 2019

M/s. New Peak Securities (Pvt.) Ltd

Appellant

Versus

The Commissioner (Securities Market Division) SECP, Islamabad

Respondent

Date of hearing:

April 6, 2023

Present:

For the Appellant:

1. Mr. Farhan Sarwar
2. Mr. Abdullah Naveed

For the Respondent:

1. Mr. Hammad Javed, Additional Director, Adjudication -I, SECP
2. Mr. Muhammad Faisal, Assistant Director (Adjudication-I), SECP

## ORDER

1. This Order shall dispose of Appeal No. 58 of 2019 filed by M/s. New Peak Securities (Pvt.) Limited (the Appellant) against the Order dated June 10, 2019 (Impugned Order) passed by the Commissioner Securities Market Division, SECP (the Respondent).
2. The brief facts of the case are that the Appellant is a trading rights entitlement certificate holder of the Pakistan Stock Exchange (PSX) and is licensed as a securities broker with the Securities and Exchange Commission of Pakistan (the Commission). The Commission in exercise of the powers conferred under section 137 of the Securities Act, 2015 (the Act) vide order dated October 29, 2018



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conducted a follow-up review of the Appellant's compliance status with the regulatory requirements contained in the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (AML Regulations). The follow-up review report (the Report) revealed that the Appellant was found non-compliant with the following requirements of the AML Regulations:

- i. In violation of Regulation 4(d) of the AML Regulations, the Appellant has no independent audit function because Mr. Farhan Sarwar was acting as internal auditor and head of operations, which raises concern about the independence of the internal audit function.
  - ii. In violation of Regulation 6(4) of the AML Regulations, the Appellant had no automatic alert system on the expiry of CNICs of clients.
  - iii. In violation of the Regulation 13 of the AML Regulations 5 discrepancies were observed with regard to the KYC/CDD of existing clients.
  - iv. In violation of Regulation 18(c) of the AML Regulations the Appellant's compliance reports were not comprehensive, however, it had a compliance function.
  - v. In violation of the Regulation 20 of the AML Regulation, the Appellant had not provided evidence that it had any annual plan (approved by the BOD) for the training program of employees with regard to AML/CFT.
3. In view of the above violations, the Respondent issued a show-cause notice dated May 3, 2019 (the SCN) to the Appellant. The Appellant filed a written reply to the SCN and hearing in the matter was held on May 10, 2019. The Respondent concluded the SCN proceedings and imposed a penalty of Rs 250,000 on the Appellant.
4. The Appellant filed this Appeal *inter alia* on the grounds that the audit period to check the compliance of the AML Regulations of the Appellant was set as November 2018 to January 2019 whereas the AML Regulations were promulgated in June 2018, hence, reasonable time was not provided by the Commission to the Appellant to comply with the requirements of the AML Regulations. The Appellant stated that multiple awareness sessions were conducted by the PSX and the Commission to develop understanding of the AML Regulations and the latest one was carried out on April 4, 2019, which is sufficient to establish that the AML Regulations are recent. The



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Appellate has taken the plea that the requirements contained under the PSX regulations cannot be construed and termed as the requirements of the AML Regulations because the PSX Regulations are separate and do not reflect the complexities and issues prescribed by the AML Regulations. The Appellant stated that Mr. Farhan Sarwar attended the hearing before the Respondent as an internal auditor and is registered as an internal auditor in NCCPL UIN database.

5. The Respondent rebutted the Appellants' grounds of appeal and stated that although the AML Regulations were issued in 2018, however, the requirement contained therein are not new because the same were introduced in the year 2012 by Karachi Stock Exchange Limited (currently PSX). The Respondent pleaded that Regulation 4.17 of the PSX Rule Book made it mandatory for the securities broker to formulate and implement an effective KYC and CDD policy in accordance with the Know-Your-Customer and Customer Due Diligence Guidelines issued by the Exchange. The Respondent submitted that Mr. Farhan Sarwar attended the said hearing and mentioned his designation as Head of Operations, which shows that Mr. Farhan Sarwar is acting in a dual capacity as internal auditor as well as Head of Operations which raises concern on the independence of the internal audit function.
6. The Bench has heard the parties and perused the record. The Bench has also examined the arguments of the parties and found that the Appellant's assertions are insignificant to challenge the findings of the Impugned Order because the requirements contained under the AML Regulations were, in essence, not unique. Rather, these were introduced in the year 2012 by the Karachi Stock Exchange with the approval of the Commission through Regulation 4.18 of the Rule Book (current Regulation 4.17). The Bench is of the view that these requirements were made mandatory for the securities brokers to formulate and implement an effective KYC and CDD policy in accordance with the KYC and CDD guidelines issued by the Karachi Stock Exchange in 2012. The Bench has analyzed the requirements of the regulatory framework of the year 2012 with the AML Regulations and observed that they do not reflect any material difference. Therefore, the Bench is of the view that the AML Regulations had not introduced any significantly new regulatory requirements, rather prior regulatory requirements had been streamlined by considering the public interest, integrity of the capital market and the country's international commitments. The Bench is also of the view that the AML Regulations were implemented on June 13, 2018, therefore, we have no doubt that after



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the promulgation of the AML Regulations, the Appellant was required to comply with the applicable requirements of the AML Regulations which should have been complied with by the Appellant from the date of their promulgation. Furthermore, as far as the independent audit function is concerned, it is established that Mr. Farhan Sarwar was working in dual capacities for the Appellant i.e. Head of Operations and Internal Auditor, therefore, holding two conflicting positions by the same person is evident that the Appellant had no independent audit function.

7. In view of the foregoing, we find no reason to interfere with the merits of the Impugned Order, therefore, by maintaining the Impugned Order, we hereby dismiss this Appeal without any order as to cost.

**(Abdul Rehman Warriach)**

Commissioner

**(Akif Saeed)**

Chairman/Commissioner

Announced on: **08 MAY 2023**