



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 70 of 2019

M/s. Zafar Securities (Pvt.) Ltd

Appellant

Versus

The Commissioner (Securities Market Division) SECP, Islamabad

Respondent

Date of hearing:

April 6, 2023

Present:

For the Appellant:

Mr. Jahanzeb Sukhera, Advocate High Court, Mandviwalla & Zafar

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. 70 of 2019 filed by M/s. Zafar 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 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



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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 internal auditor failed to identify the missing information/documentation with regard to the Appellant's clients and issued a report without qualification. Hence, the internal audit function has failed to test the AML/CFT systems.
  - ii. In violation of Regulation 6(3) & (4) of the AML Regulation the information regarding the client risk profiling was incomplete. Information regarding the nature of income and source of funding of clients was not available.
  - iii. In violation of Regulation 11 of the AML Regulations, the Appellant has assigned low risk category to all clients without recording reasons for the decision. And failed to carry out simplified due diligence for its low-risk clients.
  - iv. In violation of Regulation 9(4) of the AML Regulations the Appellant has failed to carry out enhanced due diligence (the EDD) of its two clients identified as high risk and failed to obtain their sources of funds and nature of business. Furthermore, instances were observed wherein the high-risk clients deposited huge amounts in their accounts but no EDD was conducted regarding these amounts.
  - v. In violation of the Regulation 13 of the AML Regulations the Appellant had no automated software to carry out AML/CFT, EDD risk profiling of its clients. Furthermore, no periodic review and ongoing monitoring of clients were conducted to ensure compliance with the AML Regulations.
  - vi. In violation of Regulation 18(c) of the AML Regulations the Appellant's compliance reports were not comprehensive, however, it had a compliance function.
  - vii. 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) was served to the Appellant. The Appellant filed a written reply to the SCN vide letter dated



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May 7, 2019 and hearing in the matter was held on May 10, 2019. Mr. 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, a reasonable time was not provided by the Commission to the Appellant to comply with the requirements of the AML Regulations. The 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 pertaining to the AML Regulations. During the hearing before the Appellate Bench (the Bench), the Appellant's counsel (the Counsel) argued for leniency without contesting the Appeal on merit.
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.
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 new regulatory requirements, rather prior regulatory



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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 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.

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: **04 MAY 2023**