Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 78 of 2022

UBL Fund Managers Limited

...Appellant

versus

Director/HOD, Adjudication Department-I, SECP

...Respondent

Date of hearing: May 29, 2025

Present:

For the Appellants:

1. Mr. Asif Ali Qureshi
2. Mr. Hadi Hassan Mukhi
3. Mr. Mubeen Ashraf

For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication, SECP
2. Mr. Asima Wajid, Additional Joint Director, Adjudication, SECP

ORDER

1. This Order shall dispose of Appeal No. 78 of 2022 filed by UBL Fund Managers Limited (the Appellant) against the Order dated April 30, 2022 (Impugned Order) passed by the Director/Head of Department, Adjudication-I (the Respondent) under section 40A of the Securities and Exchange Commission of Pakistan Act, 1997.

2. The brief facts of the case are that the Appellant is a wholly-owned subsidiary of United Bank Limited (UBL), duly registered with the Securities and Exchange Commission of Pakistan (the Commission) to carry out asset-management and investment-advisory services as a Non-Banking Finance Company (NBFC). An on-site inspection of the Appellant was carried out to assess compliance with the Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) regime. The inspection report, finalized on June 28, 2021, identified multiple deficiencies, most notably that the Appellant's customer-identification data was incomplete, minor accounts often lacked guardian CNICs, many entries had missing or partial CNIC or passport numbers, foreign accounts showed dummy CNICs, and certain corporate accounts were missing directors' or trustees' details; that customer risk ratings were inconsistent across different funds; that several KYC forms were missing or only partially filled; that the Appellant had failed to update its AML/CFT Policy after the 2020 Regulations were promulgated; and that enhanced due diligence for high-risk clients was inadequate, with no senior-management approvals, missing source-of-income information, absent identification documents, and incomplete EDD files.

3. Pursuant to the findings as mentioned above, the Respondent issued a Show-Cause Notice dated September 13, 2021 (the SCN), invoking Section 6(A)(2)(h) of the Anti-Money Laundering Act, 2010 (the Act), read with Regulation 31 of the AML/CFT Regulations, 2020 (the Regulations) and Rules 4(1) & 6(1) of the AML/CFT Sanction Rules, 2020 (the Rules). The Appellant filed a detailed written reply dated September 27, 2021. Hearing in the matter was held on October 29, 2021, at which the Appellant's Chief Executive Officer, Head of Compliance, and Chief Financial Officer presented the stance of the Appellant. The Respondent concluded the proceedings by passing the Impugned Order, wherein it was established that the Appellant has violated Regulations 5(a) & (b), 8(1) & (3), 9(b), 21(2), and 25(1)(a) of the Regulations, and a penalty of PKR 9,130,000 was imposed upon the Appellant.

4. The Appellant has preferred this Appeal, *inter alia*, on the grounds that the Impugned Order is based on erroneous assumptions, is contrary to settled principles of law laid down by the superior courts, and suffers from gross mis-appreciation of facts and law. The Appellant contended that the order is non-speaking and has been passed without adequately considering the documentary evidence, factual context, and legal justifications placed on record by the Appellant.

5. The Appellant submitted that the findings recorded by the Respondent are based entirely on unsupported narratives and do not meet the threshold of proof as required under the law. The Appellant submitted that material evidence was either disregarded or ignored altogether, resulting in miscarriage of justice and violation of the principles of natural justice.

6. The Appellant further submitted that the client accounts highlighted by the inspection team were largely *legacy* accounts opened before the promulgation of the AML/CFT regulatory regime, and that the vast majority of such accounts have been duly credit-blocked or classified as dormant. It was further stated that of the 112 minor accounts allegedly lacking guardian CNICs, 79 had guardian CNICs screened either within the same account or through separate accounts, 26 have been remediated, and the remaining three are either dormant or contain negligible balances.

7. As regards the 132 accounts reportedly lacking CNIC or passport information, the Appellant further asserted that 54 accounts belong to foreign nationals whose passport details were available and screened, while the remaining 78 accounts either involved shared unitholders, corporate structures, or obsolete entries which have since been rectified. It was asserted that the use of 'dummy' CNIC numbers in 63 foreign accounts was necessitated only due to a system requirement, and that these accounts were otherwise screened using alternate identifiers such as passport numbers.

8. The Appellant submitted that screening was conducted on multiple parameters, including name, father's name, date of birth, and address, and that the CNIC was not the sole basis for screening. It was argued that the screening mechanism adopted by the Appellant was consistent with industry practices and had a match threshold of 85%, which is considered conservative by global standards.

9. The Appellant further submitted that since the deficiencies were pointed out, it has onboarded an internationally reputed screening application (ICIL-LexisNexis AML solution) to enhance its compliance framework and that this system now permits screening based on passport details directly. The representatives contended that the Respondent did not point out any instance where the screening process failed due to the alleged data deficiencies.

10. With regard to the issue of inconsistent risk categorization, the Appellant explained that the instances highlighted by the Respondent pertain to accounts opened prior to 2015. The Appellant submitted that a universal profile number is now maintained for each customer to ensure uniformity of risk rating, and that adequate steps have been taken to align the risk classification across all accounts held by a customer. The Appellant further contended that relevant KYC forms and supporting documents were available for all clients and had been remediated where necessary. It was argued that, in several cases, adequate documentation such as trust deeds, financial statements, and donation receipts were available in lieu of missing KYC form fields and had been shared with the inspection team. The Appellant asserted that during a meeting with the Commission's AML Department in January, 2022, it was acknowledged that due diligence requirements may be satisfied through reliable and independent accompanying documentation.

11. With regard to the allegation concerning non-updating of the AML/CFT Policy, the Appellant submitted that the 2018 Policy contained all the principle-based requirements of the Regulations, and that the detailed procedural enhancements had been incorporated in the

SOP/Manual, which was updated on February 17, 2021 after internal deliberations through AML Committee meetings held in November and December, 2020. The Appellant submitted that the inspection team failed to consider these updates and wrongly assumed that the April, 2021 revision was the first and only such update.

12. On the issue of Enhanced Due Diligence (EDD), the Appellant submitted that all high-risk accounts were subject to proper EDD measures at the time of onboarding and remediation, and that documentary evidence relating to identification, source of funds, and senior management approvals had been duly collected. The Appellant also highlighted the existence of transaction monitoring thresholds (Rs. 5 million for NGOs/NPOs and Rs. 100 million for corporates) and red flag indicators embedded within its monitoring system.

13. The Appellant further submitted that accounts flagged as 'high risk' are monitored on an ongoing basis through an automated system which tracks investment behaviour against declared income and profile characteristics, and that accounts are automatically blocked in the event of failure to update identity documents prior to expiry. In the case of corporate accounts, renewal alerts are sent to the sales team for timely collection of updated information. The Appellant further argued that the overall instances of data gaps or technical deficiencies identified by the Respondent constitute less than 0.06% of the total customer universe of 108,007 accounts. It was contended that these minor discrepancies, many of which have been remedied, do not constitute wilful non-compliance and ought not to attract penal action of the nature imposed in the Impugned Order.

14. The Appellant submitted that its proactive compliance approach is evident from the fact that it has filed over 115 Suspicious Transaction Reports (STRs) and refunded over PKR 300 million in respect of KYC-related discrepancies. It was argued that the imposition of a heavy penalty in the present circumstances is not only unwarranted but also sets a dangerous precedent for the industry by criminalising *legacy* technical lapses which were neither deliberate nor systemic.

15. The Appellant further submitted that a subsequent on-site inspection was conducted by the Commission in the year 2023, wherein no material discrepancy or non-compliance was observed, thereby demonstrating that the deficiencies pointed out earlier had been duly rectified and that the Appellant's current systems and procedures are in conformity with the applicable regulatory requirements.

16. In response to the submissions of the Appellant, the Respondent, *inter alia,* contended that the Appellant was issued the SCN, to which it responded vide letter dated September 27, 2021, and a hearing was held on October 29, 2021. The Respondent argued that all procedural requirements of due process were fully complied with before passing the Impugned Order.

17. The Respondent contended that the arguments of the Appellant regarding alleged reliance on "mere narratives" are vague, irrelevant, and devoid of legal substance. The Respondent submitted that the Impugned Order is a well-reasoned order and duly reflects a careful and judicious application of mind by the Respondent after providing a fair opportunity of being heard to the Appellant. It was emphasized that the findings were drawn based solely on the record available, including the Appellant's own submissions, and that each violation was substantiated through objective analysis and evidence. The Respondent denied the allegations made in the appeal and reiterated that the contentions raised therein have already been responded to with sufficient clarity in the Impugned Order. It was argued that the Appellant had not raised any new grounds or demonstrated any legal error to warrant interference by the Appellate Bench.

18. Regarding the charge of maintaining an incomplete client database, particularly the absence of CNICs and passport numbers, the Respondent submitted that this violation was duly established under paras 4(i) and 4(ii) of the Impugned Order, and further addressed in paras 11(1)–(3) and 13(i) thereof. It was argued that the Appellant had admitted these deficiencies and the

Respondent had appropriately evaluated the matter in accordance with the AML regulatory framework.

19. The Respondent further contended that the Appellant's practice of entering 'dummy' CNIC numbers in place of passport numbers for foreign clients (on the pretext of overcoming system limitations), was contrary to regulatory requirements and had been justly assessed as a violation of the AML Regulations.

20. In response to the issue of improper risk categorization, the Respondent submitted that the Appellant's failure to maintain a consistent and accurate risk rating for at least 74 clients (on sample basis) was established through paras 5 and 13(ii) of the Impugned Order. Similarly, the learned representative submitted that incomplete KYC/CDD documentation in respect of five clients had been verified and recorded under paras 6 and 13(iii) of the Impugned Order.

21. With regard to the issue of the outdated AML Policy, the Respondent submitted that the contention of the Appellant has already been addressed under paras 11(8), 12(vii), and 13(iv) of the Impugned Order. The Respondent argued that although the Appellant may have updated its SOP/Manual, the Policy itself was not revised after the promulgation of the Regulations, thereby constituting a clear violation of Regulations 5(a) and 5(b).

22. As to the Appellant's claim that Enhanced Due Diligence (EDD) was performed in accordance with the law, the Respondent submitted that para 13(v) of the Impugned Order duly considered the submissions and evidence presented. However, it was held therein that the Appellant is required to adopt a more prudent and rigorous approach to ensure full compliance with the AML Regulations, particularly in dealing with high-risk clients.

23. The Respondent denied the remaining arguments of the Appellant and submitted that the contentions therein are merely a reiteration of earlier arguments, all of which have already been appropriately dealt with in the Impugned Order. It was contended that the Appellant had failed to point out any legal infirmity or perversity in the findings so recorded.

24. The Bench has considered the arguments advanced by both parties and examined the record placed before it. The Bench holds that the Respondent has correctly established that certain deficiencies existed in the client database of the Appellant at the time of inspection, particularly with respect to incomplete CNIC and passport data, use of 'dummy' CNICs, and missing identification details in certain *legacy* accounts. However, the Bench has noted that these deficiencies were primarily linked to *legacy* accounts opened prior to the promulgation of the AML/CFT regulatory framework and that the same were either dormant or credit-blocked. The Bench further notes that the Appellant undertook corrective measures immediately after receipt of the inspection findings and provided sufficient explanation for the use of alternative screening parameters where system constraints existed.

25. The Bench also observes that the Appellant's approach to customer risk categorization, though inconsistent in certain cases, did not reveal any mala fide intent or systemic failure, and has since been regularized through the introduction of a universal customer profile number to ensure consistency in risk rating. The Bench is satisfied that these inconsistencies were technical in nature and have been effectively addressed.

26. The Bench finds that the allegations regarding incomplete KYC and inadequate CDD were addressed by the Appellant through supporting documentation, including trust deeds, financial statements, and other reliable and independent documents. The Bench also takes note of the Appellant's meeting with the AML Department of the Respondent in January, 2022, wherein the use of such documentation was acknowledged as an acceptable means of fulfilling due diligence requirements.

27. With respect to the allegation regarding failure to update the AML/CFT Policy after the promulgation of the Regulations, the Bench notes that while the formal policy document was not revised until after the inspection, the substance of the required regulatory changes had already been incorporated into the Appellant's SOP/Manual as early as February 2021, following internal AML Committee meetings in November and December, 2020. The Bench holds that the deficiency was formal rather than substantive in nature.

28. As to the issue of EDD, the Bench finds that although certain high-risk accounts lacked documented approvals or source of funds at the time of inspection, the Appellant provided evidence of subsequent remediation, implementation of automated monitoring thresholds, and the adoption of industry-standard alert systems in accordance with the Commission guidelines.

29. The Bench further notes with significance that a subsequent inspection conducted by the Respondent in 2023 did not reveal any material discrepancies, thereby affirming that the Appellant had brought its systems and controls into conformity with the applicable AML/CFT framework.

30. In light of the foregoing, the Bench is of the considered view that while the violations recorded in the Impugned Order were substantiated on the basis of the 2021 inspection, the mitigating circumstances including the nature of the violations, their limited scope, absence of mala fide intent, prompt remediation, and subsequent compliance verification warrant a substantial reduction in the monetary penalty imposed.

31. Accordingly, the Bench finds that the penalty of Rs. 9,130,000 imposed under the Impugned Order is excessive and disproportionate to the nature and severity of the contraventions and hereby deems it appropriate to reduce the penalty to Rs. 500,000. The Bench further holds that this penalty shall serve the objective of regulatory deterrence while acknowledging the

Appellant's cooperation, responsiveness, and efforts towards strengthening its compliance framework. The Appeal stands disposed of with no order as to costs.

(Muzzafar Ahmed Mirza)
Commissioner

(Abdul Rehman Warraich)
Commissioner

Announced on: 12 JUN 2025