



Securities and Exchange Commission of Pakistan
Adjudication Division

Through Courier

Before the Commissioner (SMD)

In the matter of Show Cause Notice issued to Asad Mustafa Securities (Private) Limited

Date of Hearing

November 05, 2019

Present at the Hearing

Representing Asad Mustafa Securities (Pvt.)
Ltd.

- i. Mr. Mustafa Khan
(Counsel)
- ii. Mr. Zeeshan Mehboob
(Company Secretary)

ORDER

This Order shall dispose of the proceedings initiated against Asad Mustafa Securities (Pvt.) Limited (the "**Respondent**") through Show Cause Notice No. 1(69) SMD/ADJ/KHI/2019, dated October 25, 2019 (the "**SCN**") 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. Brief facts of the case are as follows:

- (a) The Respondent is a Trading Rights Entitlement Certificate (**TREC**) holder of the Pakistan Stock Exchange Limited (the "**PSX**") and licensed as a securities broker under the Securities Act.
- (b) Thematic review (the "**Review**") of the Respondent was conducted by the Commission to ascertain compliance with requirements contained in Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the "**AML Regulations**"). Subsequently, findings of the Review were shared with the respondent vide letter dated July 13, 2019.





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3. The Review revealed non-compliances with the AML Regulations & Securities Brokers (Licensing & Operations) Regulations, 2016 (“**Licensing Regulations**”); detailed as under:

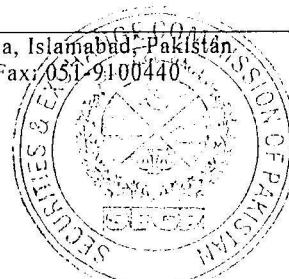
- a. Following deficiencies were noted in the AML/CFT Policy of the Respondent:
- i. Risk Assessment and categorization of entity level risk
 - ii. New products, practice and technologies
 - iii. Determination of whether a person acts on behalf of another person
 - iv. Maintenance of list where relationship was refused or terminated on account of negative verification
 - v. Enhanced Due Diligence
 - vi. Reporting of Currency Transaction Report
 - vii. Compliance officer responsibilities

The above reflects that the Respondent was noncompliant with Regulation 4(a), 5, 6(7), 6(9), 9(4)(a), 14(5) and 18(c)(i-vii) of AML Regulations.

- b. The compliance reports of the Respondent were counter signed by the Chief Executive Officer in contravention of Regulation 18 of AML Regulations that requires a regulated person to have an independent compliance function with direct reporting to the Board of Directors and 16(9)(e) and 16(9)(f) of Securities Brokers (Licensing and Operations) Regulations, 2016 (the “**Licensing Regulations**”).
- c. The internal audit report of the Respondent does not cover the aspects detailed in clause 15(a) of the AML/CFT Guidelines violation of Regulation 4(d) of AML Regulations and Regulation 16(9)(e) and 16(9)(f) of Licensing Regulations.
- d. The Respondent failed to chalk out and implement suitable training program for its employees in contravention of Regulation 20(b) of AML Regulations, which requires that a regulated person shall chalk out and implement suitable training program for relevant employees on annual basis, in order to effectively implement the regulatory requirements and regulated person own policies and procedures relating to AML/ CFT.

4. In view of the aforesaid, the Respondent *prima facie* acted in contravention of the AML Regulations & Licensing Regulations. The Commission therefore took cognizance of the aforesaid violations, issued SCN dated October 25, 2019 to the Respondent. The Respondent vide its letter dated October 30, 2019 submitted reply to the SCN, which is reproduced below:

*“This letter is in response to your letter dated 25.10.2019, bearing reference number 1(69) SMD/ADJ/LHR/2019, (the “**Show Cause Notice**”) wherein the Securities and Exchange Commission of Pakistan (the “**SECP**”) called upon Asad Mustafa Securities (Private) Limited (the “**Company**”), to show cause as to why action may not be taken against the Company under*





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section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the "1997 Act") and section 150 of the Securities Act, 2015, (the "2015 Act") for alleged contravention of various provisions of the regulatory framework applicable to the Company.

A brief background of the facts, as also stated partially in the Show Cause Notice, are that the Company is a trading rights entitlement certificate holder of the Pakistan Stock Exchange Limited (the "PSX") and is licensed as a securities broker with the SECP. The SECP, through its letter dated 13.07.2019, bearing reference number, SMD/BCD/(20)/2019, informed the Company that, after a Thematic Review (the "Review") conducted by the SECP of the AML policies of the Company as initially drafted and submitted to the SECP in November 2018 for their comments, the SECP had determined that the Company's AML/KYC Policy had prima facie allegedly failed to meet certain requirements of the Anti-Money Laundering and Countering of Financing of Terrorism Regulations, 2018 (the "AML Regulations").

Highlighting the alleged deficiencies in the Company's AML policies, the SECP asked the Company to submit its "comments" with regard to these findings by 17.07.2019.

Consequently, through its letter to the SECP dated, 16.07.2019 bearing reference number AMS/0689/SM/19, the Company provided its comments regarding the alleged gaps in its AML policies as pointed out by the SECP. This letter delivered through Courier was not responded to by the SECP.

Postage receipt of letter dated 16.07.2019 to SECP attached as 'Annexure A'

Through the 16.07.2019 letter, the Company reported that all gaps in the AML policy as alleged by the SECP had been filled by the Company as soon as it was informed by the SECP. Furthermore, the Company stated that it was willing and more than happy to provide its AML policies, as updated, to the SECP for their verification and comments.

Without receiving any response to the 16.07.2019 letter, and after a delay of more than three months, on 25.10.2019, the Company received another letter from the SECP, restating the alleged gaps as highlighted in the 13.07.2019 letter, without taking into any consideration the response from the Company through its letter dated 16.07.2019 and issued a Show Cause Notice as to why the Company may not be proceeded against. It is highlighted that the Company is already in compliance with all the AML Regulations through its amended AML policies pursuant to the SECP letter dated 13.07.2019 and in its letter dated 16.07.2019 offered to provide to the SECP its AML policies for comments and review to verify that fact. It is also stated that AML Regulations, constituting a new legal regime in Pakistan and the fact that the Company, being a small securities broker with only a handful of clients (Nine in total half of which are family) generating a gross commission of Rs. 191,000 in full year, acted diligently and in good faith to cover and fill all gaps in compliance requirements as interpreted by the SECP in its 13.07.2019 letter.

To further establish the bona fide of the Company, the Company now attaches its current AML policies, as amended after receipt of the 13.07.2019 letter to satisfy the SECP of its intent to adhere to the law and fulfill all formalities required under the rules and regulations of the SECP. Company's AML/CFT/KYC policies attached as Annexure 'B'.

To further clarify this point, please see below a detailed response to each deficiency highlighted by the SECP in its letter of 13.07.2019.





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Sr. No.	Deficiencies	Management Comments
i.	Risk Assessment & Categorization of Entity Level Risk	Reference Clause 7, Page 7
ii.	New Products, Practices & Technologies	Reference Clause 12, Page 17
iii.	Determination of whether a person acts on behalf of another person	Reference Clause 8, Page 15
iv.	Maintenance of list where relationship was refused or terminated on account of negative verification	Reference Clause 9, Page 15
v.	Enhanced Due Diligence	Reference Clause 18, Page 22
vi.	Reporting of Currency Transaction Report	Reference Clause 19, Page 26
vii.	Compliance Officer Responsibilities	Reference Clause 24, Page 33

Reference Show Cause Notice Clause (b)

The Compliance Reports of the Company were signed by the Chief Executive Officer with understanding that the CEO will sign on behalf of the BOD. However this was corrected since July 16, 2019 and all subsequent reports were signed by Compliance Officer. Even though this was not highlighted by SECP in its letter of July 13, 2019.

Company's Internal Audit & Compliance Reports attached as Annexure 'C'

Reference Show Cause Notice Clause (c)

Updated internal audit report as on June 30, 2019 (last quarter of FY 2019) is attached. Furthermore, Clause 21 on Page 32 is available in AML Policies.

Reference Show Cause Notice Clause (d)

Employees Training Program policy have clause No. 21(d) on Page No. 33 and following measures were taken into consideration for Employees Training:

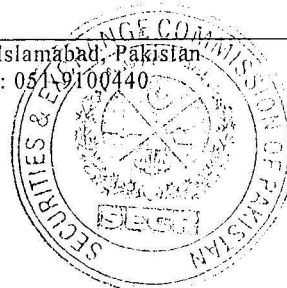
- i) SECP Seminars on AML Attended by Staff
- ii) Private coaching/training through a Law Expert.
- iii) On the job training while Account Opening

Review of updated policies on monthly basis to check any amendments made by SECP."

5. The Respondent was accorded hearing opportunity on November 05, 2019. The hearing was attended by Mr. Mustafa Khan (Counsel) & Mr. Zeeshan Mehboob (Company Secretary) as Authorized Representatives. During the hearing proceedings, the Authorized Representatives reiterated the argument as submitted in response to the SCN.

6. I have examined the submissions of the Respondent and its Representatives. In this regard, I observe that:

- a. With respect to deficiencies in AML/CFT Policy, the Respondent accepted the observations and submitted that its policy has been updated after the observation was highlighted by the Commission. The primary step to ensure effective implementation of the AML Regulations is to develop a comprehensive AML/CFT Policy which covers

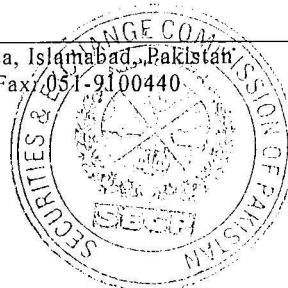




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all aspects of the AML Regulations. The deficiencies in policies, controls and procedures related to AML/CFT or violation of Regulation 4(a) of the AML Regulations. Further, it also construes as negligence on behalf of the Respondent and its compliance officer who is responsible to monitor and review the AML/CFT policies and procedures and highlight any shortcomings therefore, the Respondent was also found non-compliant with Regulation 18(c)(iii) of the AML Regulations. The requirements regarding policy are contained in Regulation 4(a) of the AML Regulations and the default thereof is admitted. Furthermore, non-existence of policy is also indicative of the fact that the formulation and implementation of procedures to achieve the policy objectives have also not been prepared and adopted. Lack of sufficient measures and controls in place to ensure compliance with the AML regulatory framework makes the Respondent liable under Regulation 5, 6(7), 6(9), 9(4)(a), 14(5) and 18(c)(i-vii) of the AML Regulations. Moreover, it may be noted that the review was conducted in February 2019 which is almost eight months after the issuance of the regulations, i.e. June 2018. However, the policy was not updated till the time of review. Therefore, I am of the considered view that a year delay indicates weakness in responsiveness on the part of management of the Respondent.

- b. In case of observation regarding compromise of independence of compliance function on account of co-signing of compliance report by Chief Executive along with Compliance Officer, it needs to be noticed that Regulation 18(a) of the AML Regulations requires reporting of Compliance Officer to the Board of Directors or to another equivalent executive position. Chief Executive Officer is a deemed director who holds an executive position in Respondent, therefore the submission of Respondent is accepted and no adverse action is warranted.
- c. Regarding the independence of audit function, the Respondent accepted the observation and submitted that its internal audit report has been updated after the deficiencies highlighted by the Commission. Further, they submitted the updated internal audit report as on June 30, 2019. Therefore, the Respondent was found non-compliant with Regulation 4(d) of the AML Regulations and Regulation 16(9)(e) & 16(9)(f) of the Licensing Regulations at the time of Review.
- d. With regard to the observation regarding non-development and implementation suitable training program for its employees, the Authorized Representative during the hearing submitted that they were providing the said trainings to their employees. However, subsequent to hearing, the Respondent submitted merely a letter dated June 05, 2019 of a law firm namely: Al-Wakeel Law Chambers, indicating that a training





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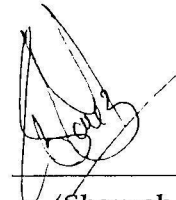
was held on June 1, 2019 (After the date of Review). The said letter is not a sufficient proof of evidence without its supporting documents like payment invoice, engagement letter and pictures of event. Therefore, the Respondent was found non-compliant with Regulation 20(b) of the AML Regulations.

7. In view of the foregoing and admission made by the Representatives, contraventions of the provisions of AML Regulations & Licensing Regulations have been established. Therefore, in terms of powers conferred under section 40A of the Act, a penalty of Rs. **50,000/- (Rupees Fifty Thousand Only)** is hereby imposed on the Respondent. Further, in terms of powers conferred under section 150 of the Securities Act 2015, a penalty of Rs. **200,000/- (Rupees Two Hundred Thousand Only)** is also imposed on the Respondent. The Respondent is advised to examine its AML/CFT policy & procedures to ensure that the requirements contained in the AML Regulations are met in letter and spirit.

8. The Respondent is directed to deposit the aforesaid penalty in the account of the Commission being maintained in the designated branches of MCB Bank Limited within 30 days of the date of this Order and furnish Original Deposit Challan to this office.

9. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with the law on the matter subsequently investigated or otherwise brought to the knowledge of the Commission.





(Shauzab Ali)
Commissioner (SMD)

Announced on *April 21*, 2020
Islamabad