



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
ADJUDICATION**

Before the Commissioner (SCD)

In the matter of Show Cause Notice under Section 282J (1) read with Section 282M (1) of the Companies Ordinance 1984 and Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) for violations of, inter-alia, Regulation # 6 (2), (3), (4) and (5), Regulation # 9(4) read with Regulation # 9(3) and Regulation # 13(3) of the AML and CFT Regulations, 2018

<i>Date of hearing:</i>	<i>June 28, 2019</i>
<i>Present (on behalf of AKD Investment Management Limited)</i>	<i>i. Mr. Imran Motiwala, CEO ii. Mr. Rashid Ahmed, Head of Compliance iii. Mr. Yasin Malik, Manager Audit</i>
<i>Assisting the Commissioner (SCD)</i>	<i>i. Ms. Bushra Aslam, Executive Director ii. Ms. Tanzila Nisar Mirza, Additional Director</i>

ORDER

This Order shall dispose off proceedings against AKD Investment Management Limited (“AKDIML”, the “Company”), which is a public limited company licensed to undertake the business of Asset Management and Investment Advisory Services initiated through Show Cause Notice (the “SCN”) bearing No. SCD/ADJUDICATION/AKDIML/11/2019 dated May 7, 2019 under Section 282J (1) read with Section 282M (1) of the Companies Ordinance, 1984 (the “Ordinance”).

2. **AND WHEREAS**, a scope specific inspection of AKD Investment Management Ltd was ordered under powers conferred upon Securities and Exchange Commission of Pakistan under Section 282I of the Companies Ordinance, 1984 vide inspection order bearing number SCD/S&ED-IW/AKDIML/2018/070 dated December 13, 2018.

3. **AND WHEREAS**, the scope of the inspection extended to review and assess the level of compliance of the AMC with respect to the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (hereinafter referred to as the AML & CFT Regulations). However, during the course of inspection, various violations/non-compliances were observed. The inspection team highlighted several deficiencies in the customers’ record/documentation (selected on sample basis) which were in violation of several provisions of AML & CFT Regulations.

4. **AND WHEREAS**, the Company was called upon to show cause in writing as to why penal action should not be taken against the Company for violations of, inter-alia, Regulations 6(2), (3), (4) & (5), Regulation 9(4) read with Regulation 9(3) and Regulation 13(3) of AML & CFT Regulations.

5. **AND WHEREAS** no written reply was received from the Company, with respect to the contentions made in the SCN. The following arguments were provided to the subject contentions by the representatives of the company, during the hearing;

- i. The CEO admitted that the company had violated Regulation # 6(4) read with annexure # I to AML & CFT Regulations since mandatory requisite documents had not been obtained in many cases. Due to absence of requisite documents, the company was also not able to conduct adequate customer due diligence (CDD) of the investor which was in violation of Regulation # 6(2) read with Regulation # 6(3). The CEO also submitted that in contravention of Regulation # 6(5), documents to ascertain company's control structure/ownership, in case of some company accounts, were not available in the investor files. Moreover, by not ascertaining the source of income, through its financial statements or any other document, in case of some of the trust accounts, the company had not performed enhanced due diligence (EDD) of various investors, thereby also violating Regulation # 9(4) read with Regulation # 9(3) of AML & CFT Regulations. The CEO further pointed out that when customers are requested for necessary documents they are reluctant to provide them and argue that other AMC's do not solicit a long list of documents when establishing business relationship.
- ii. The CEO also mentioned that identity of customers and beneficial owners had not been verified due to lack of monitoring thus resulting in non-compliance of Regulation 13 (3) of AML & CFT Regulations. However, the company had started ongoing monitoring for the KYC of investors.
- iii. The CEO further stated that after the SECP inspection, it was realized that AKDIML was facing internal systems and procedures related issues. In an effort to resolve the issues, all matters were placed before the Board Members and the AML and CFT policy of the Company was also approved by them.
- iv. The CEO further highlighted that each department was made responsible with respect to the observations highlighted in the inspection report. In this regard, every department has provided their action plan to ensure that such issues are rectified and ensure that the same do not occur again. The compliance department is closely monitoring the practices of the departments and ensures that the non-compliance is kept at a minimum level. There were instances where the departments were found to be non-compliant due to incomplete KYCs and account opening forms, and were given instructions to regularize the records. The CEO also mentioned that identity of customers and beneficial owners in certain instances had not been verified resulting in non-compliance of Regulation 13(3) of AML & CFT Regulations. In order to be compliant with AML and CFT regulations, the company has started ongoing monitoring with respect to the KYC of investors.

- v. The CEO stated that warnings had been issued to the employees involved in account opening to ensure complete documentation when establishing business relationships. The CEO also mentioned that management was also considering closing the accounts of customers and terminating business relationship with them unless they provided the requisite documents in accordance with internal SOPs and the AML and CFT regulations, within the given timeline
- vi. The CEO further mentioned that it was noticed that SOPs of several departments had not been updated for a long time. The relevant departmental heads were instructed to update their SOPs at the earliest. Written warnings to those departments were also issued to avoid such lapses in future.
- vii. The CEO further mentioned that trainings were considered important for an organization to strengthen the skills of each employee and to improve them further. At AKDIML, it is ensured that all employees are trained on a regular basis especially when there is a change in regulation or the introduction of a new law. One such example of training refers to the introduction of AML/CFT regulations 2018, which was given to all the departmental heads, and they were made responsible to train their staff accordingly.

6. Relevant Provisions of Law:

The Company has prima facie violated Regulation 6(2), (3), (4) & (5), Regulation # 9(4) read with Regulation # 9(3) and Regulation # 13 (3) of AML & CFT Regulations:

S. No.	Relevant Provision of Law
i.	Regulation # 6 (2) of AML & CFT Regulations states “regulated person shall apply CDD measures when establishing business relationship with a customer and when there is doubt about the veracity or adequacy of previously obtained customer identification data”
ii.	Regulation # 6 (3) of AML & CFT Regulations states “customer due diligence (CDD) in broader term include <ul style="list-style-type: none"> a. identifying the customer or beneficial owner and verifying the customer’s/beneficial owner’s identity on the basis of documents, data or information obtained from customer and/or from reliable and independent sources; b. understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship; and c. monitoring of accounts/transactions on ongoing basis to ensure that the transactions being conducted are consistent with the regulated person knowledge of the customer, the customer’s business and risk profile, including, the source of funds and, updating records and data/ information to take prompt action when there is material departure from usual and expected activity through regular matching with information already available with regulated person.”
iii.	Regulation # 6 (4) of AML & CFT Regulations states that “regulated person shall obtain such documents from different types of customers as provided in Annexure-I.
iv.	Regulation # 6 (5) of AML & CFT Regulations states “Regulated person should verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or may complete verification after the establishment of the business relationship, provided that- <ul style="list-style-type: none"> (a) this occurs as soon as reasonably practicable; (b) this does not interrupt the normal conduct of business; and (c) the ML/TF risks are effectively managed

v.	<p>Regulation # 9 (4) read with regulation 9 (3) of AML & CFT Regulations states “Regulated person shall perform EDD proportionate to risk posed to the business relationship by the customers that are identified as high risk or are notified as such by the Commission;</p> <p>EDD measures include but are not limited to the following;</p> <p>a) obtain approval from regulated person senior management to establish or continue business relations with such customers;</p> <p>b) establish, by appropriate means, the sources of wealth and/or funds or beneficial ownership of funds, as appropriate; including regulated person’ own assessment to this effect; and</p> <p>c) conduct during the course of business relations, enhanced monitoring of business relations with the customer.</p>
vi.	<p>Regulation # 13 (3) of AML & CFT Regulations states “regulated person shall periodically review the adequacy of customer information obtained in respect of customers and beneficial owners and ensure that the information is kept up to date and relevant by undertaking reviews of the existing records, particularly for higher risk categories of customers and the review period and procedures thereof should be defined by regulated person in their AML/CFT policies, as per risk based approach.”</p>

7. AND WHEREAS, section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) is reproduced below:

“40A. Penalty for violation of rules, regulations, directives and notifications. – (1) Any person who contravenes or fails to comply with any provision of rule made under section 39 or regulation made under section 40 or directive or notification issued under this Act shall be liable to pay by way of penalty a sum which may extend to ten million rupees and where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues.

(2) A penalty under sub-section (1) shall be imposed by the Commission after providing a reasonable opportunity of being heard to the party.”

8. I have examined the facts of the case, considered the documentary evidence placed on record and the arguments put forth by the Respondent Company. I am of the view that the submissions by AKDIML are plausible. It is obvious that due diligence was not being exercised while opening accounts, as a result of which many requisite mandatory documents were not present in the investors records. Moreover, the process of obtaining mandatory documents was initiated after the inspection team raised the observation. The deficiencies in the records in terms of mandatory documents, raises questions about the effectiveness of the compliance function and internal audit department. This leads me to believe that there were weaknesses in the compliance function.

9. In my view, the EDD process should have actually been embedded in the account opening procedure. Oversight of this requirement by the management and the dealing officers indicates that the staff were not adequately trained to comprehend the importance and need to conduct the EDD process in its true spirit. The AML & CFT Regulations were effective immediately after their issuance and warranted that AKDIML initiate the process of verification of customers/beneficial owners, at its earliest. Failure to do so reveals that AKDIML was not implementing the AML &

CFT Regulations in its letter and spirit. Further, the submission made by the Company that the process of monitoring customers on the basis of KYC has been initiated, also reflects the weakness of procedures and internal controls.

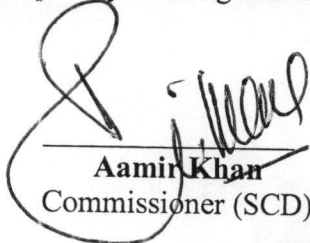
10. It is hence concluded that the AMC is responsible for the acts and omission of all persons to whom it may delegate any of its functions. Therefore, the laxity shown by the employees in performing their responsibilities is in fact the failing of the Company. It is my opinion, AKDIML needs to take cognizance of how to improve and strengthen its operational procedures and systems. AKDIML is required to bolster training programs for its staff and take disciplinary action, if need be, against those who are found to act contrary to the applicable regulatory framework. AKDIML needs to improve its systems by automating them and providing inbuilt checks in the systems that can generate alerts. Moreover, AKDIML is required to focus on the review and monitoring on a continuous basis. Above all AKDIML must ensure strict compliance with the applicable regulatory framework in future. AKDIML is hereby directed to provide a time bound plan by August 31, 2019, whereby it should provide a roadmap for ensuring complete compliance with the AML and CFT regulatory framework.

11. I would also like to commend the forthright approach and willingness demonstrated by the incumbent CEO to improve the process and systems to meet requisite regulations in their true spirit. It appears that he has grasped the gaps well and has initiated some rectification work in earnest. He must demonstrate the same vigor in planning and implementing an overhaul of the AML/CFT compliance framework.

12. However, based on my observation at paras 8, 9 and 10 above, I am of the considered view that leniency on non-compliance towards requirements of AML & CFT Regulation 6(2), (3), (4), (5), Regulation 9(4) read with regulation 9(3) and Regulation 13(3) is not possible since SECP is responsible for ensuring implementation and enforcement of the applicable regulatory framework by entities that fall under its regulatory ambit. Therefore, I hereby conclude the proceedings initiated under section by imposing an aggregate fine of Rs.200,000 (Rupees two hundred thousand only) on the Respondent.

13. The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited in the name of SECP within seven days from the receipt of the order. The receipt or bank challan is to be furnished to SECP. In case of non-deposit of penalty within the given time, a penalty of Rs.20,000 per day during which default continues shall be charged, after which proceedings for recovery of the fine as arrears will be initiated.

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


Aamin Khan
Commissioner (SCD)

Announced on:
05-08-2019 at Islamabad