



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department- I

### Adjudication Division

Through Courier

Before Director/Head of Wing (Licensed Entities-Adjudication Department-1)

In the matter of Show Cause Notice issued to Akhai Securities (Private) Limited under Section 6(A)(2)(h) of the Anti-Money Laundering Act, 2010 read with rules 4(1) and 6(1) of the AML/ CFT Sanctions Rules, 2020 and regulation 31 of the Securities & Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2020

Date of Hearing	August 11, 2022
Present at the Hearing	i. Mr. Muhammad Abid Akhai (Chief Executive Officer)
Representing the Company	ii. Mr. Shafqat Ali (Consultant)
	iii. Mr. Muhammad Shafi (Consultant)

### ORDER

This Order shall dispose of the proceedings initiated against Akhai Securities (Pvt.) Limited (the Respondent and/or the Company) through Show Cause Notice No. 2(160)SMD/ADJ-1/2019, dated May 30, 2022 (the SCN) issued under Section 6(A)(2)(h) of the Anti-Money Laundering Act, 2010 (the AML Act) read with rules 4(1) and 6(1) of the AML/ CFT Sanctions Rules, 2020 (the AML Rules) and regulation 31 of the Securities & Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2020 (the AML Regulations).

2. Brief facts of the case are that the Company is a Trading Rights Entitlement Certificate (TREC) holder of the Pakistan Stock Exchange Limited (PSX) and licensed as a securities broker by the Securities and Exchange Commission of Pakistan (the Commission).

3. Inspection of the Company was initiated by the Joint Inspection Team (JIT) pursuant to the inspection notice No. T219 dated October 04, 2021 covering review period of three (03) months starting from July 01, 2021 to September 30, 2021. Scope of the inspection includes examining compliance status of the Company with respect to certain provisions the AML Regulations. The inspection was carried out by JIT comprises officers representing PSX, Central Depository Company of Pakistan Limited (CDC) and National Clearing Company of Pakistan Limited (NCCPL). JIT vide letter dated November 11, 2021 shared its observations with the management of the Respondent for obtaining its comments. The Respondent submitted its comments vide letter dated November 19, 2021.

4. The review transpired that:

- regulation 25(1)(a) of the AML Regulations requires a regulated person to undertake TFS obligations under the United Nations (Security Council) Act 1948 and/or Anti-Terrorism Act 1997 and any regulations made thereunder, including (a) develop mechanisms, processes and procedures for screening and monitoring customers, potential customers and beneficial owners/associates of customers to detect any matches or potential matches with the stated designated/proscribed persons in the SROs and notifications issued by Ministry of Foreign Affairs (MoFA), National Counter Terrorism Authority Pakistan (NACTA) and Ministry of Interior (MoI).





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In this regard, the following observations were made by the inspection team:

- i. The Respondent did not furnish evidence related to maintenance of database of its customers, beneficial owner, nominee, joint account holder, authorized person, BoDs, Trustees & Office bearers for Targeted Financial Sanctions (TFS) screening.
  - ii. The Respondent did not furnish evidence including Nil/ No match report pertaining to performance of screening of its clients against the list of proscribed persons/ entities.
  - iii. The Respondent did not provide evidence of screening of two clients at the time of account opening.
- b. clause D of the SRO 920(I)/2020 (the SRO) dated September 28, 2020 provides that Compliance Report on Statutory Regulatory Orders issued by Ministry of Foreign Affairs under United Nations (Security Council) Act 1948 or intimation from National Counter Terrorism Authority/ Law Enforcement Agencies/ Home Departments of Provinces/ Ministry of Interior regarding updates in the list of proscribed person(s)/ entity(ies) under the Anti-Terrorism Act, 1997 shall be submitted to the Commission within forty-eight (48) hours of receiving the same in the manner as may be instructed from time to time by the Commission.

In this regard, the Respondent has failed to provide evidence of compliance during the review period. Further, it was noted that the Respondent did not timely submit the status report for SRO No. HD Punjab – Deletion – 30-06-2021.

- c. regulation 23(2) of the AML Regulations requires that the decision to rate a customer as low risk shall be justified in writing by the regulated person.

In this regard, it was observed that the Respondent had categorized 3 clients as low risk without a written justification, CDC sub accounts (11918, 11942, 12015).

- d. Regulation 8 of the AML Regulations requires a securities broker to conduct Customer Due Diligence (CDD) and also categorize each customer's risk depending upon the outcome of CDD process. Further, regulation 11 of the AML Regulations also require that the regulated person shall also identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner by using a reliable and independent document, data, or sources of information as set out in Annex 1, such that the regulated person is satisfied that it knows who the beneficial owner is. Moreover, regulation 9 of the AML Regulations requires that the regulated person shall: (b) verify the identity of that customer using reliable and independent documents, data and information as set out in Annex 1. In addition, clause note (i) of Annexure 1 of the Regulations provides that, for due diligence purposes, at the minimum following information shall also be obtained and recorded on KYC (Know Your Customer)/CDD form or account opening form: (o) Profession / Source of Earnings/ Income: Salary, Business, investment income whereas, note (iii) of Annexure 1 of the Regulations provides that In case of a salaried person, in addition to CNIC, a copy of his salary slip or service card or certificate or letter on letter head of the employer will be obtained.

In this regard, the Respondent had failed to provide:

- i. evidence of CDD, source of income/ funds and identification of beneficial owner in respect of 10 clients. Details of the clients are provided as under:

S. No	CDC Sub A/c. No.
1.	1976
2.	2628





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3.	10092
4.	10746
5.	11520
6.	11827
7.	11918
8.	11942
9.	12015
10.	12072

- ii. evidence of CDD of joint account holders of 4 clients, CDC sub accounts (2628, 11520, 11942, 12056)
- iii. KYC/ CDD forms of clients, trustees of the trust clients, directors and authorized persons of corporate clients, CDC sub accounts (1976, 12072).

5. The aforesaid violations attract applicability of regulation 31 of the AML Regulations, rule 4(1) and 6(1) of the AML Rules, and Section 6(A)(2)(h) of the AML Act, which are reproduced hereunder:

### **Regulations 31 of the AML Regulations 2020**

(1) Any contravention of these regulations shall be cognizable by the Commission in accordance with section 6A of the AML Act and liable to sanction provided in the AML/CFT Sanctions Rules, 2020 and imposed by the Commission according to Clause (h) of Sub-section (2) of Section 6A of AML Act.

### **Rules 4(1) of the Rules 2020**

(1) On any contravention as set out in rule 3(2), any or all of the following sanctions may be imposed by the concerned AML/CFT Regulatory Authority, namely:-

- (a) Impose a monetary penalty in accordance with these Rules;
- (b) impose any condition, limitation or restriction on the reporting entity's business or product offerings, as it considers appropriate,
- (c) Revoke license or de-registration of the reporting entities as applicable;
- (d) Impose a temporary or permanent prohibition on any natural person who holds an office or position involving responsibility for taking decisions about the management of the reporting entity, including but not limited to:
  - (i) issuing a written warning;
  - (ii) imposing a temporary suspension; or
  - (iii) removal from service.
- (e) Issue a statement of censure/warning/reprimand;
- (f) Issue a direction to the person to undertake any given actions, including but not limited to:
  - (i) comply with the requirements within a specified time period through a remedial plan;
  - (ii) conduct internal inquiries; or
  - (iii) take disciplinary action against directors, senior management and other officers.
- (g) Impose any other sanction permitted under the AML/CFT Regulatory Authority's enabling legislation and any rules, regulations or directives issued thereunder.

### **Rules 6(1) of the Rules 2020**

(1) The AML/CFT Regulatory Authority shall apply monetary penalties upto Rs. 100 Million per violation, in accordance with the risk-based penalty scale of the respective AML/CFT Regulatory Authority.

### **Section 6(A)(2)(h) of the Act 2010**





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*(h) impose sanctions, including monetary and administrative penalties to the extent and in the manners as may be prescribed, upon their respective reporting entity, including its directors and senior management and officers, who violates any requirement in section 7(1), 7(3) to 7(6) and 7A to 7H and any rules or regulations made thereunder or those who fail to comply with the TFS regulations. Any person aggrieved by the imposition of sanctions under this clause may prefer an appeal in such manner and within such period to such authority as may be prescribed;*

6. Resultantly, SCN was served on the Respondent detailing the allegations *prima facie* non-compliances of AML Regulations. The Respondent submitted its written response to the SCN subsequent to the hearing held on May 31, 2022, the relevant extract of which is reproduced as under:

“...

**Point 3(a)(i) of the SCN:**

*As acknowledged by the JIT in its observation number 2 of Letter of Finding, the Respondent was maintaining screening software namely, "Vision Max" which maintained complete database of the customers and their all associates including their beneficial owners, nominees, joint account holders, authorized persons, BOD, Trustee and office bearers for TFS screening. The said screening software was being used by majority of the securities brokers for TFS screening, therefore, the Respondent could not be considered as non-compliant of regulation 25(1)(a) of the AML/CFT Regulations.*

**Point 3(a)(ii) of the SCN:**

*Please refer to Respondent's response to LOFs dated November 19, 2021, which mentioned that Nil matching report was already shared with JIT. Therefore, the Respondent believes that said observation were alleged based on misunderstanding of response to LOFs.*

**Point 3(a)(iii) of the SCN:**

*Please note -hat the Respondent opened the accounts of two (2) clients identified by the JIT were opened on March 19, 2019 and December 03, 2019 under the legal framework of the SECP (AML/CFT) Regulations 2018, which provided under its clause 6(5), "the 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 – (a) this occurs as soon as reasonably practicable and (b) this does not interrupt the normal conduct of business; and (c) the ML/TF risks are effectively managed. Since the Respondent performed TFS in November 2, 2020, then when it was made as mandatory before opening of accounts under regulation 16 of the SECP (AML/CFT) Regulations, 2020, therefore, the Respondent could not be construed as non-compliance of regulation 25(1)(a) of AML/CFT Regulations for the clients those were prior to revision of AML/CFT Regulations on September 28, 2020.*

**Point 3(b) of the SCN:**

*It is humbly submitted that said SRO was not observed by JIT in its LOFs, therefore, the Respondent could not be considered as non-compliance of Clause D of SRO dated September 28, 2020 unless its receipt date is not mentioned in the SCN.*

**Point 3(c) of the SCN:**

*Three (03) specific instances of customers have been associated with the Respondent before promulgation of AML Regulations and SECP Guidelines in 2018, therefore justification for their low risks on their account forms were overlooked. Now the Respondent has recorded justification of all low-risk customers on their SAOFs and KYC forms.*

**Point 3(d) of the SCN:**





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*Please note that the Respondent provided relevant documents / updated KYC forms to JIT during its inspection, however, few of the information were missing from few inactive customers, who were not in contact at that time. However, we are attaching herewith the information of all the customers as mentioned in the list for your kind perusal...."*

7. The Respondent was accorded hearing opportunity on August 11, 2022 which was attended by Mr. Muhammad Abid Akhai (Chief Executive), Mr. Shafqat Ali (Consultant) and Mr. Muhammad Shafi (Consultant) as Authorized Representatives (the **Representatives**) on behalf of the Respondent. During the hearing, the Representatives were inquired regarding the contraventions of AML Regulations as provided in the SCN, The Representatives admitted that there were certain non-conformities with respect to the timely response and maintenance of evidence of compliance with the SRO however, now they are performing regular screening and also keeping record of the same. Further, the Respondent provided that they were not maintaining evidence of KYC/CDD of certain clients however, the record of these clients have been acquired subsequently.

8. I have gone through the facts of the case and considered the written and oral submissions of the Respondent and material available on record, in light of the aforesaid legal provisions and observed that:

- i. with regard to the maintenance of database of its customers, beneficial owner, nominee, joint account holder, authorized person, BoDs, Trustees & Office bearers for TFS screening, the Respondent submitted that it was maintaining screening software which contains database of such customers and their associated individual(s)/ entity(ies) however, JIT observed that the database was insufficient with regard to all clients and their associated person(s) at the time of inspection. Further, with respect to the evidence of including Nil/No match report pertaining to performance of screening of its clients, the Respondent provided that they were doing screening on regular basis however, they did not maintain evidence of the screening at the time of inspection. Therefore, the Respondent was found in contravention of regulation 25(1)(a) of the AML Regulations.
- ii. with regard to the screening of two clients at the time of account opening, it was observed that the accounts were opened on March 19, 2019 and December 03, 2019 at which point it was not mandatory for the Respondent to conduct screening at the time of account opening. The arguments provided for the Respondent in this regard is tenable and hence, it may not be held accountable for non-compliance in this case.
- iii. With regard to the compliance of clause D of the SRO dated September 28, 2020 it was observed that the Respondent had provided response to the SROs however, it was not provided within the prescribed time of forty-eight (48) hours. The Respondent therefore, contravened the provision of Clause D of the SRO 920(I)/2020.
- iv. With regard to the justification of low-risk clients, the Respondent, during the hearing submitted that it was not being maintained at the time of inspection. The Respondent has therefore, contravened the provisions of regulation 23(2) of the AML Regulations.

With regard to the documentation pertaining to 10 clients, the Respondent submitted that they have now obtained information on all the clients except one whose account has been inactive. The Respondent also provided copies of documentation with respect to the 10 clients however, they were obtained subsequent to the JIT inspection. The Respondent therefore, contravened the provisions of regulation 8, 11, 9 and note (i) of Annexure I of the AML Regulations.

9. In view of the foregoing and submissions made by the Respondent and its Representatives, contraventions of clause D of the SRO, regulation 25(1)(a), 23(2), 8, 11, 9 and note (i) of Annexure I





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of the AML Regulations have been established against the Respondent. Therefore, in terms of powers conferred under 6(A)(2)(h) of the Act, a penalty of **Rs. 330,000/- (Rupees Three Hundred and Thirty Thousand Only)** is hereby imposed on the Respondent. Further, the Respondent is advised to ensure effective implementation of its AML/CFT procedures.

10. 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.

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

  
(Amina Aziz)

Director/Head of Wing (Licensed Entities-Adj. Department-1)

Announced on August 19, 2022  
Islamabad

