



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before Amir M. Khan Afridi, Director/HOD (Adjudication-I)

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In the matter of

Kashf Foundation

Show Cause Notice No. &

SCD/ADJ/KF/68/2019/1187 dated June 3, 2021

Issue Date:

Date of Hearing:

June 23, 2021

Present at the Hearing

Ms. Saira Soofi, Head of legal & Co. Secretary

Representing the Respondent

Ms. Shahla Sattar, Chief Risk Officer

Date of Order:

December 30, 2021

ORDER

UNDER SECTION 6(A)(2)(h) OF THE ANTI-MONEY LAUNDERING ACT, 2010 (THE AML ACT) READ WITH RULE 4(1) OF THE AML/ CFT SANCTIONS RULES, 2020 AND REGULATION 31 OF THE SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN (ANTI MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM) REGULATIONS, 2020

.....

This Order shall dispose of the proceedings initiated through the aforesaid Show Cause Notice (the SCN) by the Securities and Exchange Commission of Pakistan (the Commission) against Kashf Foundation, hereinafter referred to as the Respondent and/ or the Company, for contravention of regulation 25(1)(a) read regulation 31 of the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2020 (the AML Regulations 2020); rule 4(1) and 6(1) of the AML/ CFT Sanction Rules, 2020 (the AML Rules); and Section 6(A)(2)(h) of the Anti-Money Laundering Act, 2010 (the AML Act).

2. The Respondent was incorporated on February 15, 2007 under Section 42 of the Companies Act, 2017, as a company limited by guarantee, not having share capital. The Company subsequently obtained license to undertake Investment Finance Services as Non-Bank Microfinance Company under the applicable regulatory framework.

3. As per the Commission's record, an onsite inspection of the Company was ordered on December 16, 2020 to assess its compliance status with AML/ CFT regulatory regime.

4. As per the Inspection report, review of the database of the Company used for screening of its clients transpired that the Company had inefficient screening process of database of the clients and associated persons. Details are as under:

- (i) CNIC of nominees/ beneficial owners and Post-Dated Cheque (PDC) Providers were same as those of the clients.
- (ii) Discrepancies noted on comparison of CNICs available with the Loan Application and Business Appraisal Forms (LABAF) and the database provided by the Company are as under:

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Description	As per Database provided		As per information available with LABAF	
	Name	CNIC	Name	CNIC
Client 1 (Loan ID: 32343925434441)				
Client	Client 1	3450160832222	Client 1	3450160832222
Nominee / Beneficial Owner	Nominee 1	3450160832222	Nominee 1	3450144286831
PDC Provider	PDC Provider 1	3450160832222	PDC Provider 1	3450180866341
Client 2 (Loan ID: 20700002104443)				
Client	Client 2	5340559037654	Client 2	5340559037654
Nominee / Beneficial Owner	Nominee 2	5340559037654	Nominee 2	5320110274429
PDC Provider	PDC Provider 2	5340559037654	PDC Provider 2	5320183519541
Client 3 (Loan ID: 30700002414)				
Client	Client 3	4420623062086	Client 3	4420623062086
Nominee / Beneficial Owner	Nominee 3	4420623062086	Nominee 3	4210123941023
PDC Provider	PDC Provider 3	4420623062086	PDC Provider 3	4420685586831

5. In view of the above, the Management of the Company submitted that:
“... at the time of providing the requisite data to your good self over email there appears to have been some malfunction and hence the observation noted under 1(i) of the LOF has been erroneously arrived at. The accurate data and information are enclosed under Annex A which is a huge and voluminous file hence we will email it to you in soft version.”

6. The management of the Company was required to provide correct data to the inspection team during the course of inspection. Subsequently, the management provided updated/ revised database to the inspection team. However, discrepancies were noted in the revised data in some of the cases where same CNIC Numbers are appearing for client and nominee. Details on a sample basis are as under:

Client 4 (Loan ID: 005900033449)		
Client	Client 4	3310491423164
Nominee	Nominee 4	3310491423164
Client 5 (Loan ID: 006700022838)		
Client	Client 5	3650168970192
Nominee	Nominee 5	3650168970192
Client 6 (Loan ID: 006800028114)		
Client	Client 6	3310539916532
Nominee	Nominee 6	3310539916532

7. While reviewing the database, it transpired that the Company did not have complete database for screening, as same CNIC were appearing for nominee/ Beneficial Owner and PDC Providers as those of clients, thereby leading to the fact that certain clients and their associates were not being scanned against the NACTA/ UNSCR proscribed persons list.

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8. Inspection team noted that CNIC of certain clients were not properly updated in the database used for screening. Instances noted on a sample basis are as under:

S. No.	Loan ID	Customer Name	CNIC	No. of characters in CNIC
1.	154912016230441	Client 7	34401558424794	*14
2.	154916249012441	Client 8	34401448925724	*14
3.	27100005022	Client 9	NULL	-

[* The must be 13 digits only.]

9. The Company in its response submitted that:

“While the Kashf Foundation [“KF”] IT system has strict checks and balances to ensure that inaccurate system is not entered and has one check enabled on front end, however the 14 digit numbers noted under clause 1(ii) of the LOF is an IT application exception. Please appreciate we are already in process of further strengthening our system by adding a back-end constraint check as well while also implementing front end logic that will only pick up 13 digits to ensure that such inadvertent exceptions do not take place in future.

We take this opportunity to add that the Company has a comprehensive review and error rectification process. We check our transactions at three multiple levels. Firstly, the Business Development Officer of the Company enters the client level data than the Branch Manager of the Company reviews and approves that data while the Compliance team and Audit teams of the Company continuously check the accuracy of the information in the database by physically reviewing client files. If an error is identified, it goes to the Accounts team of the Company for verification and approval thereafter and after approval is sought, the IT team of the Company makes the necessary change through the reversal process.

It is to be appreciated that due to the strong controls and monitoring mechanisms of the Company, the human data entry error percentage is very low i.e. less than 0.01%.”

10. The above deficiencies imply that periodic screening of clients was ineffective, as the management was still in the process of strengthening the system by adding back-end constrained checks and front-end logics which establishes the fact that certain CNICs were not properly updated in the system and hence the same were not being scanned against the NACTA/ UNSCR proscribed persons list.

11. The inspection team noted 23 instances where ‘0’ was appearing instead of the nominees’ names in the database; however, CNIC Numbers were appearing in the Nominee CNIC column. A few instances are as under:

S. No.	Loan ID	Nominee Name	Nominee CNIC
1.	6400031574	0	3840102306136
2.	29100002583	0	1730101080570
3.	29000002603	0	1730152639992

12. The management of the Company in its comments stated that:

“We have noted your observation regarding names of nominee appearing missing in certain cases, which are exceptional situations due to human error, however, the risk observation stated under

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1(iii) of LOF does not arise as we have the CNIC numbers of all the nominees in our system ensuring that the screening is done completely from all angles and that only clean persons are provided the microfinance facilities from the Company."

13. It is evident from the above observations, that database used for screening has shortcomings as same CNIC numbers were entered for client, and nominees/ beneficial owners. CNIC numbers of certain clients were not properly entered, and names of certain nominees were not entered.

14. The deficiencies stated in paras 4 to 12 above transpired that the Company has not developed effective processes and procedures for screening and monitoring customers and their associates/ beneficial owners to detect any matches or potential matches with the stated designated/ proscribed persons. Due to the deficiencies in the screening process, the Company would not be able to effectively monitor their business relationships on a continuous basis to ensure that no such relationship exists directly or indirectly with such entities and individuals. Hence, the Company is exposed to the risk of having relationship with associates of the proscribed persons as procedure of screening and monitoring are not effective, which is violation of regulation 25(1)(a) of the AML Regulations. The said regulation 25(1)(a) is reproduced as under:

Regulations 25(1) (a) of the AML Regulations:

"(1) The regulated person shall undertake TFS obligations under the United Nations (Security Council) Act 1948 and/or Anti-Terrorism Act 1997 and any regulations made there under, 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 MOFA, NACTA and MOI."

15. Non-compliance with the aforesaid provisions 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 AML 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:

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- (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 AML 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 AML Act:

"(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;"

16. In order to take cognizance of the aforesaid non-compliances, the SCN was issued to the Respondent, calling upon it to show cause in writing as to why the penalty as provided under Section 6(A)(2)(h) of the **AML Act**, may not be imposed on them for the aforementioned contraventions of the law.

17. In response to the SCN, the Company through letter dated June 21, 2021 submitted that:

"... at the outset we would like to confirm that KF believes in the highest standards of compliance and adherence with all the laws, rules and regulations. Please note our submissions as under:

1. CNIC of nominees/beneficial owners and Post-Dated Cheque (PDC) Providers same as those of clients

Please note at the time of transmission of requisite data by KF through email dated 04.01.2021 to SECP a transmission and/or technical glitch appeared to have occurred due to which the end data which was examined by SECP was erroneous data while in fact no violation of this nature fundamentally exists.

The CNIC's of nominees/beneficial owners and PDC providers were in actuality accurately incorporated in the KY system thereby resulting in correct, complete and comprehensive customer due diligence and screening ("CDD") of the client, nominee/beneficial owners and PDC provider, wherever required.

The table below further illustrates our stance:

Loan Code	As per data provided by KF through email dated 04.01.2021	As per KF LABAF	KF Reply
(Client-I) 32343925434441	<p>Client CNIC: 3450160832222</p> <p>Nominee CNIC: Same as above</p> <p>PDC Provider CNIC: Same as client</p>	<p>Client CNIC: 3450160832222</p> <p>Nominee CNIC: 3450144286831</p> <p>PDC Provider CNIC: 3450180966341</p>	<p><i>This was an email error at time of transmission of data due to division of excel file into separate parts and causing data malfunction.</i></p> <p><i>Later on, data was provided by KF on 26.02.2021 through FTP file.</i></p>

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Column 3 hereby evidences the correct data of which CDD was carried out by KF.			
(Client-2) 2070002104443	Client CNIC: 5340559037654 Nominee CNIC: Same as above PDC Provider CNIC: Same as client	Client CNIC: 5340559037654 Nominee CNIC: 5320110274429 PDC Provider CNIC: 5320183519541	Same clarification as above.
(Client-3) 30700002414	Client CNIC: 4420623062086 Nominee CNIC: Same as above PDC Provider CNIC: Same as client	Client CNIC: 4420623062086 Nominee CNIC: 4210123941023 PDC Provider CNIC: 4420685586831	Same clarification as above.

Moreover, copies of KF's LABAFs of client 1, 2 and 3 are enclosed herewith as Annexure A, which clearly demonstrates the actual position pertaining to the details of the client, nominee and PDC provider, which in fact are not the same, and it was these details of which KF carried out the CDD of. Hence, the allegation that '....Company did not have a complete database for screening as same CNICs were appearing for nominee/Beneficial Owner and PDC Providers as those of clients, thereby leading to the fact that certain clients and their associates were nor being scanned against the NACTA/UNSCR proscribed persons lists' is unfounded and without basis.

Please appreciate that the observation noted for client 4, 5 and 6, was an unintentional lapse, which now already stands rectified under the KF system of the active clients concerning the CNIC details of the nominees. The table below further explains the stance:

Loan data	As per data provided by KF through email dated 04.01.2021	KF Reply
(Client-4) 00590003349	Client CNIC: 3310491423164 Nominee: Same as client	This was an inadvertent error. However, please do appreciate that loan was in fact utilized by the client herself for tailoring business whose CDD process was fully carried out and screening of client was done against the proscribed person's lists. In this scenario there was no question of beneficial owner as client herself, being a natural person, was also the beneficiary. Nonetheless, nominee CNIC has been incorporated in the KF system as well as screened against proscribed person's lists.
(Client-5) 006700022383	Client CNIC: 3650168970192	This was an inadvertent error. However, please do appreciate that loan was in fact utilized by the client herself for livestock business whose CDD process was fully carried and screening of client

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	Nominee CNIC: Same as above	was done against the proscribed person's lists. In this scenario there was no question of beneficial owner as client herself, being a natural person, was also the beneficiary. Nonetheless, nominee CNIC has been incorporated in the KF system as well as screened against proscribed person's lists.
(Client-6) 006800028114	Client CNIC: 3310539916532 Nominee CNIC: Same as Client	This was an inadvertent error. However, please do appreciate that loan was in fact utilized by the client herself for livestock business whose CDD process was fully carried out and screening of client was done against the proscribed person's lists. In this scenario there was no question of beneficial owner as client herself, being a natural person, was also the beneficiary. Nonetheless, nominee CNIC has been incorporated in the KF system as well as screened against proscribed person's lists.

Additionally, it is imperative to understand the role of nominee in the scope of loan transaction than KF undertakes with its customers. KF avails the services of credit life insurance to protect itself against loan loss in the event of death of client and hence only in such a situation the name of nominee becomes operative who is nominated only for purpose of payment of funeral expenses and nothing beyond that.

In light of the above clarification, it is evident that the screening process and procedures devised by KF are strong and robust ensuring that the client/nominee/pdc provider and/or beneficial owner are screened thoroughly against the proscribed persons lists ensuring that the loan disbursed by KF is only given for legitimate business and is not being utilized in any illegal activity or against the AML/CFT Regulations, 2020.

2. CNICs not properly updated in database (14 digit)

KF has put in place strict checks and balances at various stages of its CDD system to ensure that inaccurate data/information is not entered in its system and that minimal human error occurs. The 14 digit numbers noted under para (6) of the SCN was an IT application exception, which now stands fixed.

Simultaneously, we have further strengthened our systems by not adding a back-end constraint check as well as also implementing front-end logic that will only pick up 13 digits but also further divided CNICs under gender segregation to ensure that such inadvertent exceptions do not take place in future. It is to be appreciated that due to the strong controls and monitoring mechanisms of KF, the human data entry error percentage is very low, less than 0.01%. Client 7 (loan code 154912016230441), client 8 (loan code 154916249012441) and client 9 (loan code 27100005022) having 14 digits CNICs were exceptional cases and in fact now stands corrected as per our rectification process. Copies of KF LABAF of these clients annexed herewith as Annexure B establishes that rectification has already been made and the same have been screened against the proscribed person's lists.

Our bona fide intent to ensuring that legal compliance is done fully in letter and spirit can be undoubtedly ascertained from our abovementioned system improvement actions.





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3. 23 cases where '0' was appearing in Nominee's name

Loan Code	Nominee Name	Nominee CNIC
6400031574	0	3840102306136
29100002583	0	1730101090570
2900002603	0	1730152639992

The abovementioned unintentional omission already stands corrected under the KF system of all the active clients out of the 23 mentioned hereinabove. It was a bona-fide and unintended gap whereby names of nominee were missing in the requisite column, however, it is to be noted that this inadvertent lapse was only of minimal number of cases out of total of approximately more than 1.1 million, which includes information of client, nominee and PDC provider and are exceptional cases due to human error. Furthermore, it is to be noted that the risk observation stated under the SCN that ".....the above discrepancies in the database imply that the data entered into the database for screening against proscribed persons list is either no complete or has not been properly updated hence giving rise to the risk utilization of the Company's services by the proscribed persons and their associates/facilitators" does not arise as the CNIC numbers of all the nominees were in fact integrated in the KF system ensuring that complete screening was done against the proscribed persons lists on basis of their unique identification numbers and only after thorough due diligence were the loan disbursed.

4. Regulation 25 of the AML Regulations 2020:

The AML/CFT policy of KF comprehensively covers all the processes and procedures required for the screening and monitoring of its customers, potential customers and beneficial owners for detecting any matches or potential matches against the proscribed persons list. Additionally, on monthly bases as well KF updated its entire NACTA list which is taken from the NACTA website. Regulation 25 of the AML Regulations 2020 is reproduced below for ease of reference:

"(1) The regulated person shall undertake TFS obligations under the United Nations (Security Council) Act 1948 and/or Anti-Terrorism Act 1997 and any regulations made there under, 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 MOFA, NACTA and MOI."

Clause (8) of the AML/CFT Policy of KF, as reproduced below, pertains to the monitoring of clients and sub-clause (8.2) clearly sets out KF processes and procedures for the screening and monitoring of customers, potential customers and beneficial owners.

8. Monitoring of clients

8.1 Periodic Monitoring through Internal Audit and Compliance

- a) Internal Audit and Compliance department shall visit and monitor the branches and clients on a sample basis to ensure that the branch complies with Kashf Foundation's AML/CFT procedures.
- b) Moreover Internal Audit shall periodically conduct AML/CFT audit on an institution-wide basis.
- c) In case of discrepancies/non-compliances observed during audit process, the findings and along with recommendation shall be communicated to the Audit Committee including Compliance Officer.
- d) Internal Auditor shall follow up their findings and recommendations until fully rectified.

8.2 Periodic screening of Proscribed/Sanctioned person lists

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On quarterly basis, the entire customer database of Kashf Foundation will be screened with the sanction lists provided in Section A. Furthermore, the list will be updated on an on-going basis as per the notifications by SECP of additions and deletions.”

'SCHEDULE A' Proscribed Person Sanction List

1. **NACTA Proscribed Persons list**
<https://nfs.punjab.gov.pk/>
<https://nacta.gov.pk/proscribed-organizations-3/>
2. **United Nation Security Council Sanction List**
<https://www.un.org/securitycouncil/content/un-sc-consolidated-list>
3. **European Union Sanction lists**
<https://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions-en>
4. **French Government Sanction Lists**
<https://www.tresor.economie.gouv.fr/services-aux-entreprises/sanctions-economique/tout-savoir-sur-les-personnes-et-entities-sanctionnees>
5. **'OFAC List' Specifically Designated Nationals and Blocked Persons List**
<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

5. Error Rectification Process:

KF understands and recognizes that due diligence, assessment, screening and verification of its customer's potential customers and beneficial owners is of utmost importance in order to ensure compliance with its AML/CFT Policy and AML/CFT Laws in letter and spirit. KF Commitment towards complete compliance with its AML/CFT Policy and AML/CFT Regulations, 2020 can be evidenced through the fact that KF ensures that in case any inadvertent lapses may occur the same are expeditiously corrected as per its due process through its rigorous checks at various stages and is always working towards achieving a resilient system.

KF has a comprehensive review and error rectification process in order to rectify any gap or lapse that may occur due to bonafide human error. These accidental lapses (which are of minimal nature) are subsequently corrected through a due process as set out under rectification steps annexed herewith as **Annexure C**. We check our transactions at three multiple levels. Firstly, the Business Development Officer of KF enters the client level data that the Branch Manager of KF reviews and approves that data while the Compliance team and Audit teams of the KF continuously check the accuracy of the information in the database by physically reviewing client files. If an error is identified, it goes to the Accounts team of KF for verification and approval thereafter and after approval is sought the IT team of KF makes the necessary change through the reversal process. Hence, KF ensures that any unintentional omissions are instantaneously also amended and not left open illustrating the efficiency of our systems and processes.”

18. In order to provide the Respondent opportunity of personal representation, hearing in the matter was fixed for June 23, 2021. Ms. Saira Soofi, Head of Legal & Company Secretary; and Ms. Shahla Sattar, Chief Risk Officer, appeared before the undersigned as the Authorized Representatives (**the Representative**) on behalf of the Respondent. The Representatives were requested to explain the reason for non-compliance with the regulations, as mentioned in SCN. The Representatives reiterated the stance taken in the aforementioned written reply by the Company and admitted the default on part of the Respondent. The Representatives assured that in future they shall remain careful regarding compliance with the regulatory requirements.

19. I have considered the written as well as verbal submissions of the Company and the Representatives respectively and of the view that justifications provided by the Representatives are not cogent as the non-compliances highlighted in the SCN are based on key information required for screening of the clients' database against the proscribed persons/ entities, as notified by NACTA and MOFA. Owing

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to the entry of inaccurate and incomplete information about some of the clients in MIS of the Company, screening of the clients of the Company rendered ineffective. Therefore, it is imperative that the Company undertakes data audit as an ongoing practice to ensure accuracy and integrity of the MIS data, to enable the Company to properly and effectively fulfill its obligations for screening of its clients, their beneficiaries and nominees.

20. Keeping in view the fact that in certain cases the data maintained by the Company was incomplete, inaccurate and unreliable. Owing to this, it is believed that the Company is not capable to screen out names/ identity of the proscribed persons/ entities, as identified by NACTA and MOFA through their respective notifications. This state of affairs establishes violation of the mandatory provisions of regulation 25(1)(a) of the AML Regulations. Therefore, the Company is liable to be penalized under Section 6A (2)(h) of the AML Act, 2010.

21. In exercise of the powers conferred under Section 6 (A) (2) (h) of the AML Act, hereby, impose a fine of **Rs.480,000/- (Rupees Four Hundred and Eighty Thousand Only)** on the Company on account of the established and conceded non-compliance of regulation 31 of the AML Regulations.

22. The Company is hereby directed to deposit the afore-mentioned fine in the designated Bank Account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days of the date of this Order and furnish receipted voucher evidencing payment of the same.

23. This Order is being issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including CEO of the Company) in accordance with the law on matters subsequently brought to the knowledge of the Commission.

(Amir M. Khan Afridi)
Director/HOD (Adj-I)

