



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Say no to corruption

Adjudication Division

CONFIDENTIAL

Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Rural Community Development Programmes

Date of hearing:

June 16, 2020

Present (on behalf of Rural Community Development Programmes)

i. Mr. Raham Bokhari (Legal Counsel)

ORDER

This Order shall dispose of proceedings initiated through the Show Cause Notice (the "SCN") bearing no. SCD/Adj-I/RCDP/19/2020/284 dated March 16, 2020 issued under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act"), and Section 282J (1) of the Companies Ordinance, 1984 (the "Ordinance") against the following Directors and the CEO of Rural Community Development Programmes ("RCDP", the "Company" or the "AMC"). In this connection, a separate addendum dated March 25, 2020 to the Company was also issued as the definition of Respondents given in para (13) of the SCN did not address the Company as Respondent. The Company and its board of directors (the "BOD") are hereafter referred to collectively as (the "Respondents").

S. No.	Name	Designation
1.	Mr. Muhammad Murtaza	Chief Executive
2.	Ms. Aeyesha Gulzar	Director
3.	Mr. Mubarak Ali Sarwar	Director
4.	Mr. Abid Majeed	Director
5.	Ms. Muqdas Iqbal	Director
6.	Ms. Nabila Mushtaq	Director
7.	Mr. Naeem Shahid	Director
8.	Mr. Safdar Ali Malik	Director

2. In order to examine and verify the compliance of NBFCs with their TFS screening obligations under AML/CFT regulatory framework, certain information was obtained pertaining to names & CNIC number of borrowers, husband, spouse, beneficial owners and nominees of clients, vide letter dated January 10, 2020. The Company provided the requisite information vide its email dated January 28, 2020.



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3. The thematic review highlighted instances where the Company, *prima facie*, failed to comply with the applicable provisions of AML Regulations and applicable regulatory framework. The following deficiencies were observed:

- (i) While screening the data provided by RCDP, against NACTA's Schedule IV (Proscribed Persons) List, it was observed that a match of the beneficial owner/user of funds granted to borrower/client was found with NACTA's Proscribed persons list (Schedule IV). However, the record indicated that as per record, the Company corresponded with the respective client to terminate its business relationship after the thematic review highlighted the irregularity.
- (ii) In case of a client, a proscribed person, whose name was available on NACTA's list, was mentioned as nominee of the borrower. As per available record, the Company corresponded with the respective client to terminate its business relationship after the thematic review highlighted the irregularity.

The afore-mentioned lapse indicated that RCDP had failed to ensure compliance with Regulation 6(5a), Regulation 6(3)(a) and Regulation 13 (7) of SECP (AML/CFT) Regulations 2018. Additionally the lapse also constituted violation of Regulation 9 (1) and 9(2)(d) of Non-Banking Finance Companies and Notified Entities Regulations, 2008 which prescribes that NBFCs shall ensure prevention of money laundering and other illegal trades and abide by such laws, directives and circulars to safeguard the NBFC against involvement in money laundering activities and other illegal trades.

4. The Respondents were called upon to show cause in writing as to why penal action should not be taken against the Company for violations of Regulations 6(5a), 6(3)(a) and 13(7) of AML and CFT Regulations, and Regulation 9(1) of the NBFC and Notified Entities Regulation 2008. A written reply was received vide letter dated April 17, 2020 from the legal counsel on behalf of Respondents, wherein the contentions made in the SCN were categorically addressed.

5. The following arguments were provided in the reply, which are given as below:

We hereby submit our written responses to explain and justify with the request not to impose penalties on our Company. RCDP has adopted constructive measures to develop systems and controls in compliance since issuance of AML & CFT guidelines by SECP. It is to state that in compliance with the AML/CFT Regulations 2018, the following steps have been taken:

RCDP has developed, designed and implemented the AML/CFT framework within the institution with the available resources in order to prevent our Company from the involvement in AML/CFT activities. RCDP has active AML/CFT policy in place approved by its Board of Directors and the policy is regularly reviewed in Board Meetings. Copy of present policy is appended herewith as Annex-A.



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- Using the technological advantages, RCDP has developed and maintained the database of the proscribed persons, entities and negative persons and enabled the restrictions with their national identity numbers to restrict its portfolio and developed a controlled environment in the Company to counter the criminal activities of money laundering and terrorism activities. The customer risk profiling, by adopting the risk based approach and ongoing monitoring system of customers' transaction of repayment is defined, for some of the warning signs or red flag as mentioned under the guidelines. at different tiers and levels with respect to the transactions and activities of a typical microfinance borrower.
- RCDP has also provided adequate knowledge and training to its staff members and ensure they remain update on ongoing monitoring with the regular AML/CFT training program with the techniques of conducting due diligence and ongoing monitoring of existing borrowers in compliance with the AML/CFT policies and procedures. List of trainings conducted is appended herewith as Annex-B.
- RCDP ensures overall compliance with received SROs and NACTA notifications ensures the submission of the compliance reports as required by SECP, and submits all the relevant and authentic information. Last compliance report submitted to SECP is appended herewith as Annex-C.

In relation to proscribed persons RCDP received SECP letter vide email dated 19 November, 2019 and in compliance whereof, RCDP, after screening the borrowers (customers) testing in its database against NACTA proscribed list of 6617 person, did not find a single customer in blacklisted category. Subsequently, in compliance of SECP's letter dated 10th January, 2020, RCDP provided the requisite information to SECP including data of customers, parents, guardian, beneficial owner, nominees of borrowers and depositors vide its email dated 28th January, 2020 - copy whereof is appended herewith as Annex-D - where it revealed that following names of two (2) persons which RCDP MIS system failed to identify and therefore their froze their accounts:

1. Customer Name -(not listed in 4th schedule - proscribed persons list)
Beneficial owner (Spouse) name -(proscribed person)
2. Customer Name -(not listed in 4th schedule - proscribed persons list)
Beneficial owner (Spouse) name -(proscribed person)



It is submitted for your kind consideration, that in the last year during the months of October and November 2019, RCDP was in the process of up-gradation of its MIS into SMART MIS version. Therefore, the omission to report the spouses of its customers during reporting was inadvertent and due to software system up-gradation being in the transition state. The development of the software was at initial stage, as it was not completely incorporated in the MIS System. However, this system up-gradation development has been completed and complete compliance is now ensured.

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6. The hearing in the matter took place on June 16, 2020 wherein Mr. Raham Bokhari, legal counsel appeared on behalf of the Respondents. He reiterated the assertions contained in the written reply dated April 17, 2020.

7. I have analyzed the facts of the case, considered the documentary evidence placed on record, along with the arguments put forth by the Respondent Company. I am of the view that the submissions by RCDP are not plausible due to the following:

- a) It is evident that the screening process of accounts carried out against the proscribed lists (issued by UNSC and NACTA) by RCDP was rendered ineffective and did not serve the purpose/objective of screening of unitholders/ beneficial owners completely.
- b) The aforementioned also implies that RCDP did not provide the factual position to the Commission, since the Company in response to the Commission's email dated November 19, 2019, informed that no match was found in the database. However, in view of afore-mentioned instances, the Company *prima facie*, failed to properly screen its customers/beneficial owners/nominee database and to report the match to the Commission. Hence, not providing the factual report to the regulator is considered as a serious oversight and tantamount to mis-reporting by RCDP.
- c) The argument furnished by RCDP in its reply to the show cause notice that RCDP was in the process of up-gradation of its MIS into SMART MIS version and the omission to report the spouses of its customers during reporting was inadvertent since the software system up-gradation was in the transition state, is not tenable. In my view, RCDP should have had alternative arrangements such as excel based sheets for manual screening of the database, until the conclusion of the upgradation of the MIS.
- d) The Company filed STR with FMU after the default committed by the Company was highlighted by the Commission. It is a matter of concern that since the company failed to screen its customer/ beneficial owner/ nominee database adequately and report matches, timely STRs could not be generated, whereby contravention of regulation 6(5a) of the AML Regulations has been established.
- e) During the course of hearing attention was drawn by the counsel towards a previous Order where SECP had taken a lenient view. Matter of fact is that a number of Orders have been passed with similar instances of violations of the AML Regulatory framework, with special reference to establishment of business relationship with proscribed persons. In all such cases not only penalty has been imposed but also the quantum of penalty is relatively higher due to the threat that it poses to the national economy/interest. This Order is consistent with the earlier Orders comprising similar AML/CFT violations.

It is pertinent to mention that the nature of the role of Board of Directors demands that they should be proactive and take a stronger interest in management activities to ensure impact on



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discharge of its fiduciary responsibilities. The Board needs to stay informed of how the organization is being managed to protect its legal responsibilities. However, the Respondents could not furnish any evidence regarding efforts to perform oversight of the policy implementation. I am of the considered view that the Respondents on their part had a fiduciary responsibility for oversight of RCDP, among other, to ensure compliance of the mandatory legal framework, but failed to ensure compliance of the same. The BOD has been unable to demonstrate that it has fully discharged its responsibilities with respect to oversight of implementation of its policy directive. In fact, the BOD has displayed negligence in this respect since they did not follow up on their directives with the management. This indicates laxity on part of the BOD towards its responsibilities. It is expected that the Respondent enhance their role to attain the expected level of vigilance for ensuring meticulous compliance of the aforesaid regulatory regime.

9. Regulation 9(1) and 9(2)(d) of Non-Banking Finance Companies and Notified Entities Regulations, 2008 prescribe that NBFCs shall ensure prevention of money laundering and other illegal trades and abide by such laws, directives and circulars to safeguard the NBFC against involvement in money laundering activities and other illegal trades. Violation of the aforementioned Regulations attracts penal provision under section 282J (1) of the Companies Ordinance, 1984.

10. In view of the foregoing, it is concluded that the lapse was demonstrated by both the Company and the BoD. The laxity shown by both has exposed it to breach of mandatory provision with respect to TF risk management and TF obligation. Based on my observation, I am of the considered view that leniency on non-compliance towards Regulation 6(5a), Regulation 6(3) and Regulation 13(7) of the AML & CFT Regulations and Regulation 9(1) and 9(2)(d) of the NBFC and Notified Entities Regulation, 2008 by RCDP, 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 40A of the Securities and Exchange Commission of Pakistan Act, 1997 and section 282J(1) of the Companies Ordinance, 1984 by imposing a penalty of **Rs.1,000,000/- only/-** (Rupees One Million Only) on the Company and a penalty of **Rs.125,000/- only** (Rupees One hundred and twenty five thousand) on each of eight directors, including the Chief Executive. The penalty (**Rs. 2,000,000/- only in aggregate**) has been imposed on the Respondents for failing to take due care to organize and control the affairs of the Company in such a manner that the implementation of AML/CFT framework to check money laundering and terror financing activities is effective and violation of the said framework is avoided.

11. The aforesaid fine must be deposited in the designated bank account maintained with Bank Limited in the name of SECP within thirty days (30) from the receipt of the order. Receipt or bank challan is to be furnished to SECP.



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12. 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.



Ali Azeem Ikram

Ali Azeem Ikram
Executive Director/HOD (Adjudication-I)

Announced on July 7, 2020
Islamabad