722

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

ORDER	
Name of Company:	**M/s. JingleCred Digital Finance Limited**
Number and Date of Show Cause Notice (the SCN):	SECP/SCD/ADJ-I/JL/155/2024/361 dated August 20, 2024
Respondents:	M/s. JingleCred Digital Finance Limited
Date(s) of Hearing(s):	(i) October 7, 2024; and (ii) October 10, 2024
Case represented by:	(i) Mr. Jawed Husain, Advocate High Court *(As Authorized Representative)*
Provisions of law involved:	Section 6A(2)(h) of the Anti-Money Laundering Act, 2010, read with Rule 4(1)(a) and Rule 6(1) of the AML/CFT Sanctions Rules, 2020, and Regulation 31(1) of the Securities and Exchange Commission of Pakistan (Anti Money Laundering / Countering Financing of Terrorism) Regulations, 2020, for contravention of Regulation 4(d), 8(3), 11,16 and 9 read with Note (ii) of Annexure-I thereof.
Date of the Order:	July 23, 2025

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (**the "Commission"**) through the Show Cause Notice No. SECP/SCD/ADJ-I/JL/155/2024/361 dated August 20, 2024 (**"SCN"**) against M/s. JingleCred Digital Finance Limited (**the "Company/Respondent"**) under Regulation 31(1) of the Securities and Exchange Commission of Pakistan (Anti Money Laundering/Countering Financing of Terrorism) Regulations, 2020 (the **"AML Regulations"**), read with Section 6A(2)(h) of the Anti-Money Laundering Act, 2010 (the **"AML Act"**), and Rule 4(1)(a) and 6(1) of the AML/CFT Sanction Rules, 2020(the **"AML Rules"**) for contravention of regulations 4(d), 8(3), 9 read with Note (ii) of Annexure-I, 11 and 16 of the AML Regulations.

2. The Company was incorporated on October 27, 2022 under the Companies Act, 2017 **(the "Act")** and obtained a license to carry out Investment Finance Services as a Non-Banking Finance Company (**NBFC**) under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 **(the NBFC Rules)** on March 10, 2023.

3. Regulation 4(d) of the AML Regulations provides that the regulated person shall categorize its own overall entity level risk as high, medium or low based on the result of risk assessment. Further regulation 8(3) of the AML Regulations requires the regulated person to categorize each customer's risk depending upon the outcome of the Customer Due Diligence (**CDD**) process.

4. Regulation 9(b) of the AML Regulations provides that the regulated person shall verify the identity of that customer using reliable and independent documents, data and information as set out in Annex 1 of the AML Regulations and Note (ii) of Annex 1 provides that the photocopies of identity documents shall be validated through NADRA Verisys or Biometric Verification and the regulated person shall retain copy of the same as a proof of obtaining identity from customer.

5. Regulation 11 and 16 of the AML Regulations provides that the regulated person should verify the identity of the customer and beneficial owner before establishing a business relationship or during the course of establishing a business relationship.

6. Brief facts leading to the case are that the onsite inspection of the Company was initiated under powers conferred upon the Commission under section 282I of Companies Ordinance 1984 **(the "Ordinance")** and section 6A(2)(f) of the AML Act, vide inspection Order bearing number SECP/OD/JDFL/2023-24/27 dated November 28, 2023 with a scope to check the status of compliance with the applicable NBFC and AML/CFT Laws and Regulatory Framework. The findings/ observations of the Inspection team (**the Team**) were shared through letter of findings dated April 15, 2024 **(the LOF)** with the Company and comments received vide email dated April 30, 2024 were incorporated at the relevant sections of the Inspection Report dated May 20, 2024.

7. The Inspection Report revealed the following deficiencies with the AML regulatory framework:

a) Review of the record information provided by the Respondent transpired that customer risk categorization process is being automatically done through MSAASPRO, an automated solution for global customer screening and risk categorization is shown as "No" in the customer database shown by the Respondent. Hence, it appears that the output being provided by the software is not categorizing the customer in terms of risk profile, it is merely screening the customer as per its programming. The Respondent, therefore, on certain parameters, has categorized all customers as low risk which is violation of regulations 4(d) and 8(3) of AML Regulations.

b) During the inspection, it was revealed that the Respondent collects the copies of CNIC for verifying identity of its customers however does not conduct NADRA verisys or biometric verification. The Respondent informed that it is currently corresponding with NADRA on verisys registration. In view thereof, the Respondent is, not conducting NADRA verisys or biometric verification for its customers which is contrary to the requirements prescribed in terms of Note (ii) of Annexure-I read with regulation 9 of the AML Regulations.

c) It was transpired during the inspection that the Respondent verifies the identity of individuals through CNIC which is required during loan application process however there is no specific policy in place for the identification of beneficial owner of the customer resultantly beneficial owner for the customers are not established. In view thereof, the Respondent has failed to identify the beneficial owner in transaction with its customers in contravention of regulations 11 and 16 of AML Regulations.

8. In view thereof, the Respondent is, *prima facie*, in violation of regulations 4(d), 8(3), 11, 16 and regulation 9 read with note (ii) of Annex 1 of the AML Regulations, which attract the applicability of penal provisions of regulation 31(1) of thereof read with Section 6A(2)(h) of the AML Act and Rule 4(1)(a) and 6(1) of the AML Rules. The relevant provisions of law are as under:

Regulation 4(d) of the AML Regulations:
"Risk Assessment - The regulated person shall take appropriate steps in accordance with section 7F of the AML Act to identify, assess and understand its money laundering, and terrorism financing risks for customers, countries or geographic areas and products, services, transactions or delivery channels. The regulated person shall:

...

(d) categorize its own overall entity level risk as high, medium or low based on the result of risk assessment"

Regulation 8(3) of the AML Regulations:
"Customer Due Diligence –

...

(3) The regulated person shall categorize each customer's risk depending upon the outcome of the CDD process."

Regulation 9 of the AML Regulations:
"The regulated person shall: (a) identify the customer; and (b) verify the identity of that customer using reliable and independent documents, data and information as set out in Annex 1."

Note (ii) of Annexure-1:
"The photocopies of identity documents shall be validated through NADRA verisys or Biometric Verification. The regulated person shall retain copy of NADRA Verisys or Biometric Verification (hard or digitally) as a proof of obtaining identity from customer"

Regulation 11 of the AML Regulations:
"The regulated person shall also identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner by using 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."

Regulation 16 of the AML Regulations:
"The regulated person should verify the identity of the customer and beneficial owner before establishing a business relationship or during the course of establishing a business relationship."

Regulations 31 of the AML Regulations
"(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."

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;"

Rules 4(1)(a) of the AML Rules:
"(a) Impose a monetary penalty in accordance with these Rules;"

Rule 6(1) of the AML Rules:
"(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."

9. While taking cognizance in the matter, the SCN was issued to the Company calling upon it to show cause in writing as to why penalty as provided under Section 6A(2)(h) of the AML Act, rules 4(1)(a) and 6(1) of the AML Rules read with regulation 31 of the AML Regulations, may not be imposed for contravening the above-mentioned provisions of the law. In response to which Mr. Jawed Hussain Advocate, as an Authorized Representative of the Company vide letter dated September 18, 2024, *inter alia*, submitted as under:

PRELIMINARY OBJECTIONS

1. *Securities and Exchange Commission of Pakistan (Anti Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing)] Regulations, 2020 (the SECP AML Regulations) have been issued by the Commission in exercise of the powers conferred by section 6A of the Anti-Money Laundering Act, 2010 (the AML Act)) but the AML Act does not have power to delegate. Hence, the Commission cannot delegate its powers to any of its officers and the offences under the SECP AML Regulations are triable by the Commission itself as a collegiate body. Therefore, the SCN issued by Wing Head is without any lawful authority and has no legal value.*

2. *Section 10 of the SECP Act provides that the Commission may delegate any of its functions or powers under this Act or any administered legislation to one or more Commissioners or any officer of the Commission. However, list of administered legislation provided in SCHEDULE-I does not contain the name of AML Act. Therefore, the SCN issued by Wing Head is without any lawful authority and has no legal value.*

ALLEGATION No. i.; Categorization of All Customers as Low Risk: -

It is submitted that:

a. *The company has framed its own ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM POLICY and also the AML/CFT SCREENING PROCESS.*
b. *We have entered into an arrangement with RMS Technology (Private) Limited, who is providing the Software named MSAASPRO, an automated solution for global customer screening for AML/CFT screening (the Service Provider).*

c. *As soon as any application is submitted by any customer, the customer risk categorization process is automatically done through MSAASPRO. The software of the said Service Provider carries out the risk assessment of every customer at the time of on-boarding and on an ongoing basis, in respect of the following areas:*
   i. *Sanctioned lists including UN list, NACTA database*
   ii. *PEPs status*
   iii. *Geographical location of the customer*
d. *Whenever the Commission publishes a new UN or NACTA proscribed persons list on the e-services portal, we screen all our customers against the updated list and report any matches to the Commission and the Financial Monitoring Unit (FMU).*
e. *As per SECP Guidelines on AML/CFT, the risk assessment controls of a Reporting Person (RP) must be aligned with the nature, size, transaction volume, geographic scope, product profile, and complexity of the business. After the result of the software of the said Service Provider, and based on the forgoing mentioned factors we carry out the risk categorization i.e. High, Medium, Low.*
f. *According to our policy, we allow the loan to Low risk customers upon the outcome of Customer Due Diligence (CDD) process. Hence, it is a matter of policy and not the categorization of all customers as low risk as alleged.*
g. *During last one year we have rejected 71 applications on the basis of screening.*
h. *The rejection was done on the basis of Sanctioned lists as well as the PEPs status.*
i. *On the basis of above results, we also generate the Suspicious Transaction Report (STR) and submit to FMU.*
j. *Besides a Report in respect of all the (STRs) is submitted to SECP on quarterly basis.*
k. *Hence, the company is not only fully compliant with Regulation 4(d) and 8(3) of the AML/CFT Regulations, 2020 but also the other requirements under the AML Legal framework applicable in Pakistan.*
l. *It is absolutely incorrect and vehemently denied that risk categorization is shown as "No" in the customer database shown by the Respondent for all the cases.*
m. *In view of the above, it is also absolutely incorrect and vehemently denied that the output being provided by the software is not categorizing the score in terms of risk profile, or it is merely screening the customer as per its programming, as alleged.*
n. *The allegation is not firm and specific and it is based on assumption since it states that* "it appears *that the output being provided by the software is not categorizing the score in term of risk profile, or it is merely screening the customer its programming", as alleged.*
o. *It is submitted that a show cause notice is a foundational document and must contain all information and evidences. If such evidence or information is incomplete or vague or suffers from any other defect, the SCN cannot be sustained. Reliance in this respect is made on the case titled Cartex vs. Collector Sales Tax and Federal Excise and other (reported as* ***2013 PTD 1536****). Hence, the SCN is defective and liable to be withdrawn.*

<u>Without prejudice to above,</u>

a. *It's pertinent to note that all JDFL customers are Pakistani citizens (only natural persons) majority of them are from central regions, either salaried or self-employed with stable residential address, and basic banking accounts or mobile wallets.*
b. *All of the customers belong to the lower strata of the society availing these miniscule unsecured loans for their daily basic needs. They have never shown any irregular behaviour which might raise the suspicion of any money laundering or terrorism financing.*
c. *We do not provide loans to legal entities or high-net-worth individuals. To further mitigate the risk of lending to such individuals, our mobile application is intentionally available only on Android devices, ensuring we cater specifically to our target audience while minimizing exposure to higher-risk borrowers.*
d. *Additionally, as per Circulars 10 and 15 of 2023, these customers are only permitted to borrow up to PKR 25,000 for a maximum duration of 30 days.*
e. *Considering these factors and the AML/CFT guidelines of SECP and Financial Monitoring Unit (FMU), our customers fall within the category of low-risk score profiles.*
f. *This categorization is based on their information collected during the application process which includes, the purpose of the loan, source of income, geographic area and successfully clearing proscribed person and any other publicly available list of unwanted persons.*

g. *Any applicant who refuses to provide information like Name, CNIC, and source of income or appears in any proscribed person list is automatically rejected by the system.*
h. *According to the National Risk Assessment (NRA) 2023, the overall inherent vulnerability of the financial sector is rated as medium. Specifically, public companies are assessed as having a low vulnerability to money laundering (ML) and terrorist financing (TF), while the NBFC sector is similarly rated as having a low risk of being used as a channel for TF. As a public company registered as a Non-Banking Finance Company (NBFC), and engaged in low-value financial transactions, our company is classified as having a low vulnerability to both ML and TF risks.*

ALLEGATION No. ii; Non-conduct of NADRA Verisys and Biometric Verification: -

a. *This allegation is really strange and surprising for the company. It is very well known in the NBFC sector and SECP that the NADRA Verisys service is not available for the last one year or so. The efforts are underway by SECP and the NBFI sector for the availability of NADRA Verisys.*
b. *SECP initiated the process for resolving the issues with NADRA vide email dated 1.7.2024 addressed NBFI & Modaraba Association of Pakistan.*
c. *It was conveyed to the NBFI & Modaraba Association of Pakistan, in the aforesaid email that "SECP is planning to arrange a meeting with NADRA representatives later or early next week, to discuss the issues faced by lending NBFCs or queries related to BVPN connectivity. Please provide detailed, entity-specific issues by COB Tomorrow".*
d. *The process is underway. According to the latest news, Pakistan Fintech Network organized a comprehensive Fintech industry meeting with NADRA lead by Chairman, PFN, and CEO PFN with Chairman of NADRA on 28.08.2024. Senior Official of the SECP were also present in the meeting. Chairman NADRA confirmed that non-Banks will soon access the same services as Banks. Chairman NADRA also acknowledged the need for 24/7 NADRA access to support a truly digital Pakistan, promising to address this further.*
e. *As noted by the inspection team, we are also in coordination with NADRA since November 2023.*
f. *Once we get approval from NADRA, we will implement NADRA Verisys for verification of identity documents. We are trying our best to expedite the process.*
g. *Due to the above constraints, we are relying on third parties (Easypaisa and Jazzcash) for verifying the identity of customers in the absence of NADRA Verisys, which is also equally good.*
h. *Further, we are only allowing the on boarding those individuals who already have a basic banking account or mobile wallet, which means their identities have already been verified by the bank or wallet service provider.*
i. *Without prejudice to the above, as soon as the NADRA Verisys Service is available, we shall avail the same.*
j. *In view of the position explained above, there is no violation of Note (ii) of Anneure-1 read with regulation 9 of AML Regulations.*

ALLEGATION No. iii; Non-Identification of Beneficial Owners: -

a. *The matters pertaining to verification of identity of the beneficial owner are provided under regulations 11 to 17 of AMLCFT Regulations, 2020 but there is no specific definition of Beneficial Owners in the said Regulations issued by SECP.*
b. *However, it is very much clear from the said regulations that the term beneficial owner is used in the background of a legal person and the legal arrangement.*
c. *A legal person denotes an incorporated company. Legal arrangement includes trusts and waqfs, as provided in the Regulations.*
d. *40 Recommendations of FATF, provides the following definition of beneficial owner:*
*"**Beneficial owner**" refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement."*
e. *Section 2 of AML ACT, 2010 provides the following definition of beneficial owner:*
(iv) "beneficial owner" means,—
    (i) natural person who ultimately owns or controls a customer or the natural person on whose behalf a transaction is being conducted; or
    (ii) natural person who exercises ultimate effective control over a legal person or legal arrangement;
f. *Section 123A of Companies Act, 2017 provides the following Explanation of beneficial owner:*

Explanation. —For the purpose of this section, the term "ultimate beneficial owner" means a natural person who ultimately owns or controls a company, whether directly or indirectly, through at least twenty five percent shares or voting rights or by exercising effective control in that company through such other means, as may be specified.

g. *Section 2(1)(7) of the Companies Act, 2017 provides the following Explanation for the beneficial ownership of shareholders or officer of a company*
"Beneficial ownership of shareholders or officer of a company" *means ownership of securities beneficially owned, held or controlled by any officer or substantial shareholder directly or indirectly, either by—*
   (a) him or her;
   (b) the wife or husband of an officer of a company, not being herself or himself an officer of the company;
   (c) the minor son or daughter of an officer where "son" includes step-son and "daughter" includes step-daughter; and "minor" means a person under the age of eighteen years;
   (d) in case of a company, where such officer or substantial shareholder is a shareholder, but to the extent of his proportionate shareholding in the company:

   *Provided that "**control**" in relation to securities means the power to exercise a controlling influence over the voting power attached thereto:*
   Provided further that in case the substantial shareholder is a non-natural person, only those securities will be treated beneficially owned by it, which are held in its name.
h. *It is very much clear from all the above provisions in different legal frameworks that the term beneficial owner is used in the background of a legal person and the legal arrangement.*
i. *As stated above, a legal person denotes an incorporated company. Legal arrangement includes the for trusts and waqfs, as provided in the Regulations.*
j. *The Purpose of the identification of beneficial ownership is to reach to the last natural person who is the real owner of investor. Therefore, compliance of this requirement will come into play when some legal person will apply for loan and an exercise must be required to be undertaken to find out the natural person behind that legal person being actual beneficial owner.*
k. *AML-CFT POLICY of the company provides complete mechanism/ procedure for the Identification and Verification of the beneficial owner. However, for the time being, the company is providing loan to the natural persons only as per its policy and no loan is being provided to a legal person or a legal arrangement.*
l. *All our existing customers are natural persons who have their own bank accounts or mobile wallets and obtain loans for their personal use, the same is agreed to by the customer in the Loan Agreement.*
m. *In simple words no loan is being provided to a legal person or a legal arrangement. Or in other words no loan is being provided to a customer other than a natural person.*
n. *In view of the above, there is no question of Identification and Verification of the beneficial owner.*
o. *Hence there is no violation of regulations 11 and 16 of AML-CFT Regulations, 2020 issued by SECP.*
p. *No specific / actual case has been cited in the SCN where the any loan is provided to a legal person or a legal arrangement.*

<u>Present status of compliance by the company</u>

The company is compliant to all the requirements of the legal framework applicable on it, which shows the behaviour of the company towards corporate compliance. It also shows that the company had no intention to avoid any compliance requirement. Most important is the intention and the actual conduct. In view of the facts and circumstances of the case and the legal position, as explained above in detail, the SCN is liable to be withdrawn on the allegation wise and other grounds.

<u>ALLEGATION-WISE GROUNDS</u>

<u>ALLEGATION No. i. - Categorization of All Customers as Low Risk</u>

a. *According to our policy, we allow the loan to Low risk customers only upon the outcome of Customer Due Diligence (CDD) process. Hence, it is a matter of policy and not the categorization of all customers as low risk as alleged.*
b. *All the customers of the company are*
   i *Pakistani citizens (only natural persons)*
   ii *with stable residential address,*

iii and basic banking accounts or mobile wallets,
iv belong to the lower strata of the society
v availing unsecured loans for their daily basic needs.
vi maximum limit of loan was PKR 25,000, and maximum duration is 30 days
vii falling within the category of low-risk score profiles

c. The company, as a policy, does not provide loans to:
   i legal entities or
   ii high-net-worth individuals.
   which minimizes exposure to higher-risk borrowers.

d. Hence, our customers fall within the category of low-risk score profiles.

e. Company's AML-CFT POLICY is very much in place in the company and its implementation is evident from the rejection of 71 applications on the basis of screening.

f. AML/CFT SCREENING PROCESS is done by the Software named MSAASPRO, an automated solution for global customer screening and the customer risk categorization process is automatically done through the said Software at the time of on-boarding and on an ongoing basis, in respect of the following areas:
   i Sanctioned lists including UN list, NACTA database
   ii PEP's status
   iii Geographical location of the customer

g. After the result of the said software, and based on the forgoing mentioned factors, the company carry out the risk categorization ie. High, Medium, Low and allow the loan to the customers falling Low risk category. During last one year we have rejected 71 applications on the basis of screening.

h. We also generate the Suspicious Transaction Report (STR) and submit to FMU. The reports are also submitted to SECP on quarterly basis.

i. After on-boarding whenever the sanctioned lists are updated, the company again screen all the existing customers against the updated list and report any matches to the SECP and FMU.

j. The company is not only fully compliant with Regulation 4(d) and 8(3) of the AML/CFT Regulations, 2020 but also the other requirements under the AML Legal framework applicable in Pakistan.

k. It is absolutely incorrect that risk categorization is shown as "No" in the customer database shown by the Respondent for all the cases.

l. It is also absolutely incorrect that the output being provided by the software is not categorizing the score in terms of risk profile, or it is merely screening the customer as per its programming, as alleged.

m. In brief, the company is fully compliant to CDD process, categorization of customers at the time of on boarding, decision on the basis of risk sore, rejection of applications on the basis of screening, generation of STR and reporting to FMU and subsequent screening after change in sanctioned list.

n. The allegation is vague and not firm/specific. It is based on assumption since it states that "it appears that the output being provided by the software is not categorizing the score in term of risk profile, or it is merely screening the customer its programming", as alleged.

o. Since the allegation is vague, the SCN is defective, not sustainable and liable to be withdrawn on this ground as well as the other grounds stated above.

ALLEGATION No. ii – Non-conduct of NADRA Verisys or Biometric Verification

a. The allegation is false and unfounded.

b. The allegation is strange and surprising for the company since it is very well known in the NBFC Sector, MFN, NADRA and SECP that the NADRA Verisys service is not available for the last one year or so and the efforts are underway by us, SECP and all the above name organizations for the availability of NADRA Verisys.

c. Chairman NADRA has promised to resolve the issue.

d. Despite the above constraints, we have not left it unattended and the objective is being achieved by relying on third parties (Easypaisa and Jazzcash) for verifying the identity of customers in the absence of NADRA Verisys, which is also equally good.

e. Loan is being allowed to the persons having basic banking account or mobile wallet, having their identities already verified by the bank or wallet service provider.

f. There is no violation of Note (ii) of Anneure-1 read with regulation 9 of AMLCFT Regulations, 2020 or at least we are not responsible for the same. Hence, the SCN is not sustainable and liable to be withdrawn on this ground as well as the other grounds stated above.

ALLEGATION No. iii-Non-Identification of Beneficial Owners

a. The company is not providing loan to a legal person and the legal arrangement, requiring identification of Beneficial Owners, from any stretch of imagination, as per definition of Beneficial Owners provided in:
   i 40 Recommendations of FATF
   ii Section 2 of AML ACT, 2010
   iii Section 123A of Companies Act, 2017
   iv Section 2(1)(7) of the Companies Act, 2017.

b. There is no specific definition of Beneficial Owners in the AMLCFT Regulations, 2020 issued by SECP.

c. As per policy of the company, no loan is being provided to a customer other than a natural person.

d. Hence, there is no question of Identification and Verification of the beneficial owner. Hence there is no violation of regulations 11 and 16 of AML-CFT Regulations, 2020 issued by SECP.

e. No specific / actual case has been cited in the SCN where the any loan is provided to a legal person or a legal arrangement. Hence, the SCN is defective.

f. In view of the above the SCN is not sustainable, having no substance and liable to be withdrawn on grounds stated above.

OTHER GROUNDS

a. In the absence of any enabling provision for delegation of power in Anti-Money Laundering Act, 2010, the Commission cannot delegate its powers to any of its officers and the offences under the SECP AML Regulations are triable by the Commission itself as a collegiate body. Therefore, the SCN issued by Wing Head is without any lawful authority/jurisdiction and has no legal value.

b. That the overall conduct of the company towards compliance of regulatory framework of SECP is positive and company has no intention to avoid any compliance.

c. That there is no mens-rea on the part of the company, for the compliance, if any.

d. That no major issue or instance of fraud or misappropriation has been observed by the inspection team.

e. That the inspection team has raised very minor issues and mostly without any evidence/instances.

f. That nothing has been concealed.

g. That in view of the above, there is no cause of action.

h. That the company commenced its business operations on 31.05.2023 (the date on which it made its first disbursement), the inspection has been ordered on 28.11.2023, within a period of just 6 months of commencing the business which is unprecedented. Had the inspection been conducted after one year or so, as per SECP's practices, there was a possibility that there is no observation of the inspection team.

i. That now, the company is by and large compliant to all the requirements of the legal framework applicable on it.

j. That it had been the practice of the Commission for a long time that when an entity is compliant, a lenient view is taken and the matter is closed with a warning without imposing any fine or penalty. More, in a number of cases, the penalty imposed on a company is converted into a warning by the Appellate Bench of the Commission.

10. In order to provide an opportunity for personal representation, a hearing in the matter was fixed for October 7, 2024, which was adjured upon request of the Respondent. Subsequently, hearing into the matter was re-fixed for October 10, 2024, which was attended by Mr. Jawed Hussain – Advocate at its Authorized Representative (**the Authorized Representative**). During the course of hearing, the Authorized Representative was advised to explain the reasons for the alleged non-compliances, as narrated in the SCN. The Authorized Representative reiterated the same stance as taken in response to the SCN and emphasized on the following:

Preliminary Submissions:

Inspection is illegal as power under AML Act 2010 not delegated and inspection should have been ordered under SECP Act. Therefore, inspection was illegal hence all subsequent proceedings are illegal;

(i) On same ground, SCN is also deemed illegal by Respondent;
(ii) No penalty provided under regulation 31 of the AML Regulations read with Section 6A(2)(h) of the AML Act, 2010.

In respect of low risk rating:
(i) Screening done through automated software;
(ii) Software regularly updated;
(iii) STRs are regularly generated.

In respect of NADRA Verisys:
(i) Issues are at the end of NADRA, not Respondent;
(ii) Despite non-availability of NADRA Verisys, verification is being done through different means such as Jazz Cash etc.

In respect of Beneficial owners:
(i) No definition in AML regulations, ...
(ii) Agreement copy to be provided.
(iii) BO is used in terms of a legal person.
(iv) SCN requested to be withdrawn on reasons mentioned above.

11. Subsequent to the hearing, the Representative submitted additional arguments vide email dated October 11, 2024 stating the following:

"Additional Arguments & Preliminary Objections

Illegal inspection

a. SCN is the result of inspection ordered by Mr. Obaid-ur Rehman on 28.11.2023
b. SECP AML/CFT Regulations, 2020 were issued by SECP as a regulatory authority in exercise of the powers conferred by section 6A of AML Act 2010;
c. There is no enabling provision in AML Act, 2010 for a regulatory authority to delegate its power;
d. Name of AML Act is also not mentioned in the list of administered legislation in SCHEDULE-I r/w Section 10 of SECP Act;
e. Hence, SECP cannot delegate its powers to any of its officers to order inspection
f. Inspection order under S.6A(2)(f) AML Act was to be issued by SECP itself as a collegiate body.
g. Hence, the inspection ordered by Mr. Obaid-ur Rehman was illegal, void ab-initio and without lawful authority.
h. If the foundation of the building is false, the superstructure has to fall on the ground. Hence the order on the basis of a false allegation is void, illegal and inoperative.
i. Consequently, all the subsequent actions, including this SCN, are unlawful according the judgements of the superior courts. Reliance is made on the following reported cases:
i Suit No. 328 of 2001 - IN THE HIGH COURT OF SINDH, KARACHI
ii Yousuf Ali vs. Mohammad Aslam Zia (PLD 1958 SC (Pak) 104)
iii Executive District Officer (Education), Rawalpindi vs. Mohammad Younas (2007 SCMR 1835)
iv Muhammad Idris and others vs. Federation of Pakistan through Secretary Ministry of Finance and others (PLD 2011 SC 213)
v Province of Punjab through District officer (Revenue) District Collector Kasur vs. Border Area Committee through Chairman and others (PLD 2011 SC 550)
vi Rehmatullah and others vs. Saleh Khan and others (2007 SCMR 729),
vii Muhammad Tariq Khan vs. Khawaja Muhammad Jawad Asami and others (2007 SCMR 818),

1. Offences under the SECP AML Regulations are not triable by Wing Head
In absence of enabling provision for delegation of powers under the AML Act, the offences under the SECP AML Regulations are triable by the Commission itself as a collegiate body.
SCN issued without any lawful authority, illegal, void ab-initio and has no legal value and not triable by Wing Head being coram non-judice.

2. ***Absence of risk-based penalty scale in AML Regulations***

   a. *Regulation 31 of SECP AML/CFT Regulations, 2020 provides that:*
   '31. Penalty.- (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.'

   b. *Clause (h) of Sub-section (2) of Section 6A of AML Act- 2010 does not provide any penalty amount.*

   c. *Rule 6 of AML/CFT Sanctions Rules, 2020 provides that:*
   '6. Penalty amounts. — (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.'

   d. *SECP has not yet specified risk-based penalty scale.*

3. ***Factors to be considered by AML/CFT Regulatory Authority***

   Rule 4 OF AML/CFT Sanctions Rules, 2020 provides a number of factors to be considered before imposing any penalty. It specifically provides that:

   AML/CFT Regulatory Authority shall not to impose a sanction if the reporting entity took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

   AML/CFT Regulatory Authority shall take into account all relevant circumstances:

   (i) the gravity and the duration of the contravention or failure;
   (ii) The type of sanction and penalty amount necessary to constitute a dissuasive, proportionate and effective sanction in respect of the contravention;
   (iii) the person's history of compliance with the Act and any regulations made thereunder, including:
      (a) any potential systemic consequences of the contravention;
      (b) previous contraventions by the person
   (iv) the financial strength of the Reporting Entity;
   (v) the amount of profits gained or losses avoided by the person;
   (vi) remedial measures taken by the person to address the cause of the contravention;
   (vii) the extent to which the contravention was negligent or willful; or
   (viii) any other factor deemed appropriate

12. I have reviewed the facts of the case, and also considered the written and verbal submissions made by the Authorized Representatives. At this juncture, it is important to discuss the following legal and factual elements:

i. Preliminary Objection on delegation of powers of AML Act:

The Respondent has contended that the Commission cannot delegate powers under the AML Act to its officers as the AML Act is not included in Schedule I of the Securities and Exchange Commission of Pakistan Act, 1997 **(the "SECP Act")** as an administered legislation. The Respondent has further stated that Section 10 of the SECP Act empowers the Commission to delegate functions or powers conferred on it under an administered legislation or the SECP Act. Therefore, the SECP can exercise the powers under the AML Act as a "collegiate body" only.

In this regard it is stated that the AML Act is a special law for prevention of money laundering and combating financing of terrorism, which was enacted through an Act of the Parliament and Schedule-IV thereto was added vide amendment in the AML Act and notified in official Gazette vide Notification No. F.22(50)/2020-Legis dated September 24, 2020. Clause (ii) of Schedule-IV to the AML Act explicitly declares the Commission as the AML/CFT Regulatory Authority for reporting entities licensed or regulated by it under any administered law. Pursuant to Section 6A of the AML Act, the AML/CFT regulatory authority shall exercise the powers and perform the functions as set out in the AML Act and as prescribed thereunder. Hence the Commission being, the AML/CFT regulatory authority under the AML Act is fully empowered with respect to issuing regulations, monitoring and supervising, including conducting inspections, for the purpose of determining compliance with the requirements of AML Act and any rules or regulations made thereunder in respect of the reporting entities.

In view of above, it is crystal clear that AML Act is an administered legislation of the Commission and accordingly, as conferred by Section 6A of the AML Act, the Commission promulgated the AML Regulations, exercised the powers and performed the functions as set out in the AML Act.

In terms of Section 10 of the SECP Act, the Commission is fully empowered to delegate its functions or powers under the SECP Act or ***any administered legislation (inserted through SECP Amendment Act, 2016 dated August 6, 2016)*** to one or more Commissioners or any officer of the Commission. Therefore, the delegation of functions and powers under the AML Act to its officers is rightly and duly made and notified by the SECP.

ii. Categorization of Customers Risk:

The Respondent is non-compliant with regulations 4(d) and 8(3) of the AML Regulations, which require (i) categorization of the entity's overall risk as high, medium, or low based on its risk assessment (Regulation 4(d)); and (ii) categorization of each customer's risk based on the outcome of the CDD process (Regulation 8(3)).

It was observed that the Respondent relies on an automated screening tool, **MSAASPRO**, for screening customer during onboarding and ongoing monitoring. However, during the review of customer data provided by the Respondent, risk categorization was marked as "No" for customers, indicating that the risk categorization i.e. (high/medium/low was not assigned. This transpired that the software is performing only screening against watchlists without applying a risk-based approach to assign a risk category to each customer, as mandated by Regulation 8(3). Moreover, the Respondent failed to establish that it has conducted and documented an entity-level risk assessment, as stipulated under regulation 4(d). The rationale that customers are inherently low risk due to their socioeconomic background and the limited nature of the products offered does not fulfil the requirement of a formal, documented risk categorization process. Relying on broad assumptions to classify all customers as low risk, without conducting individual risk evaluations, demonstrate lacks in the application of a risk-based AML/CFT framework.

The customer database presented by the Respondent showed "No" in the risk categorization field for its customers, confirming that customers were not being categorized as low, medium, or high risk as required under Regulation 8(3). The screen shot of such cases was shared by the Team with the Respondent through LOF. While the Respondent contended that it considers various parameters and follows internal AML/CFT policy and the Commission's guidelines, however, no evidence was presented to demonstrate that each customer's risk is individually assessed and duly recorded after completion of the CDD process.

While the Respondent claims that seventy-one (71) applications were rejected and STRs were filed, such actions do not substitute for the specific regulatory requirement to categorize each customer's risk and the institution's overall risk. The law requires to categorize the customers (i.e. the persons with whom business relationship has been established) on the bases of CDD process, the seventy-one (71) application which were rejected while onboarding a customer. Further, the Respondent also admitted that according to the National Risk Assessment (NRA) 2023, the overall inherent vulnerability of the NBFC sector is rated as medium.

Moreover, the system-generated data did not reflect individualized customer risk ratings, therefore the risk assessment methodology was not found effective and in compliance of the AML/CFT requirements. In light of the above, the Respondent is not compliant with regulations 4(d) and 8(3) of the AML Regulations.

iii. Non-conduct of NADRA Verisys and Biometric Verification:

Regulation 9(b) of the AML Regulations obligates regulated persons to verify the identity of their customers using reliable and independent documents, data, and information, as prescribed in Annex 1 of the Regulations. Note (ii) of Annex 1 specifically mandates that photocopies of identity documents must be validated through NADRA Verisys or Biometric Verification and that the regulated person must retain a copy of such verification (hard or digital) as proof.

During the course of inspection, it was observed that the Respondent collects copies of customers' CNICs; however, it does not conduct NADRA Verisys or Biometric Verification for the identity validation of its customers. In response, the Respondent admitted that NADRA Verisys is not currently operational for them and stated that they are in correspondence with NADRA for registration since November 2023. The Respondent also submitted that it is a known fact that the NADRA Verisys service is not available to the NBFC Sector for the last one year or so and the efforts are underway by NBFCs and the Commission for the availability of NADRA Verisys. The Respondent further submitted that it relies on third-party platforms such as Easypaisa and JazzCash for customer verification, as required under regulation 24 of the AML Regulations and only onboards individuals who already possess a bank or wallet account.

In this regard, it was observed by the Inspection Team that the Respondent was not obtaining the Verysis related information from the mentioned third party in respect of CDD performed by the third party nor any record maintained by the Respondent in this regard. Moreover, not all loans were disbursed through Jazzcash and Easypaisa, as loans were also disbursed to bank accounts with other scheduled banks. It is pertinent to highlight that the Respondent neither obtained CDD/Verisys related information from stated third parties nor kept copies of the same as required under Regulation 24 of the AML/CFT Regulations, therefore, the argument is untenable.

Notwithstanding the Respondent's explanation, the requirement under Note (ii) of Annexure-1 is categorical and mandatory. A regulated person is under a clear and mandatory obligation to validate identity documents through NADRA Verisys or biometric verification and to maintain proper evidence of such verification. Reliance on third parties or indirect claims of verification through bank or mobile wallet accounts does not satisfy the specific requirement for the regulated person to conduct NADRA Verisys or biometric verification, particularly in cases where the regulated person has not obtained/maintained any evidence of such third-party verification.

In view of the above, while the violation of regulation 9(b) read with Note (ii) of Annex I of the AML Regulations stands established, a lenient view is taken considering the ongoing efforts by the Respondent to obtain access to the NADRA Varysis. The Respondent's reliance on third-party verification particularly in absence of Compliance with Regulation 24 of the Regulations, though cannot be considered as compliant with the regulatory requirement, the Respondent is strictly warned to ensure compliance with regulation 9(b) of the AML Regulations in letter and spirit.

iv. Non-Identification of Beneficial Owners:

Regulation 11 of the AML Regulations requires every regulated person to identify the beneficial owner and take reasonable measures to verify their identity using reliable and independent documents, data, or sources of information. Regulation 16 further mandates that such verification must occur before or during the establishment of a business relationship.

The term *beneficial owner*, is defined in Section 2(iv) of the AML Act, under which the AML Regulations were framed. As per this definition, a *beneficial owner* is not limited to legal persons or arrangements; it refers broadly to the natural person who ultimately owns or controls a customer or on whose behalf a transaction is being conducted. For ready reference the same is reproduced as under:

> *"beneficial owner" means, —*
> ***(a) natural person who ultimately owns or controls a customer or the natural person on whose behalf a transaction is being conducted; or***
> *(b) natural person who exercises ultimate effective control over a legal person or legal arrangement"*

In light of the above definition, the Respondent fails to address the part (a) of the above definition where a natural person may ultimately own or control a customer or the natural person in whose behalf a transaction is being conducted.

In response, the Respondent contended that its customer base is limited to natural persons and that the requirement to identify beneficial owners applies in cases where a legal person or legal arrangement is involved. This interpretation is misplaced and overly restrictive. The obligation to identify the beneficial owner under the AML/CFT framework exists, regardless of whether the customer is a natural or legal person. Therefore, the argument of the Respondent is untenable.

Moreover, the non-identification of beneficial ownership, is a systemic non-compliance with the minimum requirements of regulations 11 and 16 of the AML Regulations. The assertion that no legal persons are customers does not absolve the regulated person from their statutory obligation to evaluate beneficial ownership on a case-by-case basis.

Accordingly, the failure to establish and implement a mechanism for the identification and verification of beneficial owners is violation of regulations 11 and 16 of the AML/CFT Regulations.

v. **Jurisdictional and Procedural issues:**
The Respondent's assertion that the inspection was *illegal, void ab initio*, and that the subsequent issuance of SCN lacks lawful authority, is legally misconceived and factually untenable and the same is deliberated in detail under para 12(i) of this Order.

The reliance on superior court precedents regarding *void actions* or *unauthorized proceedings* is misplaced, as the inspection and SCN were initiated by duly authorized officers acting under a legally valid regulatory framework. The contention that the entire process is "coram non judice" has no legal merit.

The contention of the Respondent that in the absence of a formally issued risk-based penalty scale by the Commission, the imposition of any penalty under the AML Rules would be procedurally defective is legally unfounded. Rule 6 of the AML Rules clearly requires that penalties be applied in accordance with the risk-based penalty scale of the respective AML regulatory authority; however, it does not mandate the prior issuance or publication of the penalty scale. Therefore, the argument of the Respondent is untenable.

Therefore, the inspection, issuance of SCN, and the proceedings thereunder are valid, lawful, and in accordance with the AML Act, SECP's delegated authority, and applicable enforcement regulations. The objections raised by the Respondent are accordingly unsubstantiated and are hereby overruled.

13. In view of the foregoing, the contraventions of regulations 4(d), 8(3), 11 and 16 of the AML Regulations have been established, which attract the applicability of Section 6A(2)(h) of the AML Act, 2010 and Rules 4(1)(a) and 6(1) of the AML Rules, 2020, read with Regulation 31 of the AML Regulations. I have given due consideration to the written as well as verbal submission made by the Authorized Representatives in response to the said non-compliances. I, therefore, in terms of the powers conferred under Section 6A(2)(h) of the AML Act read with Regulation 31 of the AML Regulations and S.R.O. 827(I)/2022 dated June 9, 2022, impose a penalty of **Rs. 75,000/- (Rupees Seventy-Five Thousand Only)** on the Respondent on account of the established defaults.

14. The Respondent is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and furnish receipted voucher issued in the name of the Commission for information and record. In case the Respondent is aggrieved by this Order may, within thirty days of the date of this Order, prefer an appeal to Appellate Bench of the Commission in terms of Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 in accordance with the procedure for filing an appeal as laid down under the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003.

(Mahboob Ahmad)
Additional Director / Head of Wing
Adjudication Department-I

Announced:
July 23, 2025
Islamabad.