



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

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

In the matter of Show Cause Notice issued to AL Habib Capital Markets Private Limited

Date of Hearing

February 14, 2020

Present at the Hearing
Representing the Respondents

Mr. Aftab Q. Munshi, chief executive
Mr. Ghulam Hussain, chief operating officer
Mr. Mehdi Imam, compliance officer

ORDER

This Order shall dispose of the proceedings initiated against AL Habib Capital Markets (Private) Limited (the "Company") through Show Cause Notice No. 1(178)SMD/Adj-1/KHI/2018 dated January 31, 2020 (the "SCN") issued under Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the "Regulations") and section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act"). The Company through its chief executive is referred to as the Respondents.

2. Brief facts of the case are as follows:

- (a) The Company is a Trading Rights Entitlement Certificate holder of the Pakistan Stock Exchange Limited (the "PSX").
- (b) An inspection of the Company was conducted vide Inspection Notice No. T039 dated November 6, 2019 with a scope to review and check compliance with applicable AML/CFT regulatory framework including Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the "Regulations") and other related circulars, notifications and directives. The review of the Company was carried out by the Joint Investigation Team comprising of members of Pakistan Stock Exchange (PSX), Central Depository Company of Pakistan Limited and National Clearing Company of Pakistan Limited.

3. In view of the findings and based on recommendation on record, Securities and Exchange Commission of Pakistan (the "Commission") took cognizance of the matter by issuing show cause notice dated January 31, 2020 to the Respondents as they, *prima facie*, acted in contravention of the Regulations. The Respondents were advised to show cause in writing within seven (7) days from the date of the SCN as to why penalties may not be imposed upon them under section 40A of the Act for contravening the Regulations. As per available information, the Company, *prima facie*, failed to comply with the applicable requirements of the Regulations, which is being summarized as below:





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- i. The Company did not maintain database of beneficial owners, board of directors/trustees/office bearers for screening of its clients. The Company did not provide the details of board of directors/office bearers for 2 high-risk corporate clients belonging to high-risk geographic locations. The Company was required to monitor its relationship, if any, with the entities and individuals mentioned in sub-regulation (5a) of regulation (6), on a continuous basis, and was required to ensure that no such relationship existed. The screening of clients and periodic monitoring of associated persons/beneficial owners was *prima facie*, not being performed by the Company.
 - ii. 15 instances were highlighted where the Company did not validate from NADRA Verisys the identity documents of its clients, nominees, joint account holders, board of directors, trustees, administrators, executors and authorized persons of its clients. The Company informed that it was in the process of getting Verisys service from NADRA.
 - iii. In case of client, having 7 trustees, beneficial ownership details were not verified. The Company did not have copies of CNICs of trustees of mentioned client, hence, identity of trustees was not verified *prima facie* in violation of regulation 7(2)(a) of Regulations. Moreover, the Company did not verify the natural persons exercising ultimate ownership, ultimate control or ultimate effective control over another client (trust). In response to observation and reply of the Company it was revealed that the names appearing on the copy of trust deed dated May 29, 1959 did not match the list of trustees provided by the Company. The Company, hence, did not obtain resolution of trustees regarding appointment of existing trustees in case of mentioned client, in violation of regulation 7(2)(a) of Regulations.
 - iv. Review of the resolution passed by the trustees of a trust (client), as provided by the Company, showed that there was no sufficient evidence to substantiate that authority was given by the trustees in the name of the Company, to open and operate a trading account, through its investment advisor.
 - v. The Company did not provide copies of Form 29 (list of directors) and Form A (list of members) of a corporate client to identify and verify the identity of the natural persons (whether acting alone or together), who owned or ultimately had controlling ownership interest in the legal person, *prima facie*, in violation of regulation 7(1)(b) of the Regulations.
4. The chief executive through his letter dated February 10, 2020, furnished reply to the SCN, which is summarized in the following manner:
- i. The observations raised during the thematic review communicated to the Company vide letter number T-039 dated November 11, 2019 were emphatically responded vide letter dated November 13, 2019, and despite given reply SCN was issued. The Commission had overlooked the reply of the Company.
 - ii. SCN did not identify the pertinent persons/clients/entities/trusts, in relation to whom the alleged violations were occurred.
 - iii. The Company had standing policy of abiding by Regulations, as well as other applicable laws, rules and regulations in true letter and spirit and there had been no violation whatsoever.





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- iv. The Company disagreed that it did not maintain database of beneficial owners, board of directors/trustees/office bearers. All such details, information and documents were requested by inspection team were duly provided to them and there was no issue. As per the findings of the inspection team, the only observation of inspection team was that the Company had not shared details of authorized persons of the clients who belonged to high-risk jurisdiction/geographical location, which was duly replied by the Company. The Company reiterated that no documents were found missing. Inspection team never raised any observation with regard to sub-regulation (5a) and of regulation (6) in relation to details of 2 high-risk corporate clients belonging to high-risk jurisdiction / geographical locations. It was further clarified that these 2 corporate clients whose names had even not been mentioned were marked as high risk on November 9, 2019. The said accounts were marked as high risk after the issuance of PSX's guidance notice dated October 25, 2019, according to which regulated entities were required to submit internal risk assessment covering all aspects including transnational TF risk by November 10, 2019, whereas the Company completed internal risk assessment by November 9, 2019 i.e. well within time.
- v. With regard to the Company's responsibility of screening of clients and periodic monitoring of associated persons/ beneficial owners, it was not correct that *prima facie* this was not being performed by the Company. Inspection team was satisfied with live checking of screening of clients/board of directors/trustees/office bearers and therefore no observation was made in the findings.
- vi. The Company had been obtaining all required documents from different categories of customers as provided in annexure-I of regulation 6(4) and there was no issue whatsoever and therefore inspection team was fully satisfied and did not raise any observation.
- vii. It was not correct that the Company did not validate from NADRA Verisys the identity documents of clients, nominees, joint account holders, board of directors, trustees, administrators, executors, and authorized persons of its clients. This was duly done through NADRA Verisys facility of Bank AL Habib Limited, the holding company of the Company, which had foolproof advance system of verification from NADRA, including biometric verification. The Company's obligation of verification from NADRA fully fulfilled and therefore there was no violation. Nonetheless, the Company had applied to NADRA for Verisys identification of the clients, nominees, joint account holders, board of directors, trustees, administrators, executors and authorized persons of clients. At any rate, the obligations of the Company were fulfilled through NADRA Verisys facility of Bank AL Habib Limited and therefore there was no violation.
- viii. The Company submitted that its obligations under regulation 7(2)(a) were being duly fulfilled in true letter and spirit and therefore there was no violation whatsoever.
- ix. Beneficial ownership of all trustees of trusts were being duly obtained with verification of the natural persons exercising ultimate ownerships, ultimate control or ultimate effective control and no such observation was communicated through letter of findings. With regards to names appearing in the trust deed dated May 29, 1959, it be noted that the trustees of trusts keep on changing like directors of companies. The initial trustees names mentioned in the trust deeds would continue





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to be reflected in the trust deeds for times to come, in the same manner as the names of subscribers/directors of memoranda of associates of limited companies. Change of trustees did not require amendment of trust deeds. The resolution under which trustees were last appointed or elected were available with the Company and therefore there was no violation whatsoever.

- x. The Company submitted that its obligations under regulation 6(7)(a) were being duly fulfilled in true letter and spirit and therefore there was no violation.
- xi. All trusts delegate authorization through resolutions passed by the trustees, which suffice. In instant case, resolution dated August 21, 2017 was self-contained and was annexed. Moreover, there was full-fledged investment advisory agreement dated February 22, 2017.
- xii. The Company submitted that its obligations under regulation 7(1)(b) were being duly fulfilled in true letter and spirit.

5. In order to afford the Respondents an opportunity of making personal representation, hearing in the matter was fixed for February 14, 2020. The hearing was attended by Mr. Aftab Q. Munshi, chief executive, Mr. Ghulam Hussain, chief operating officer and Mr. Mehdi Imam, compliance officer, being Authorized Representatives in terms of board of director's resolution dated February 10, 2020. During the hearing proceedings, the Authorized Representatives were advised to explain the reasons for the alleged violations of the Regulations. Authorized Representatives discussed each alleged violation and reiterated their stance as given in writing. The Authorized Representatives also submitted supporting documents during the hearing. Chief executive, through letter dated February 18, 2020 provided additional details, and copies of related documents in support of contentions. Moreover, vide his email dated March 2, 2020, chief executive submitted his reply in support to the arguments made in hearing and also furnished supporting documents which also included a confirmatory statement, duly signed by chief executive, informing compliance in terms of regulation 12 of the Regulations. He, *inter alia*, submitted through aforesaid email that:

- i. *As mentioned in para (6) of our reply dated February 10, 2020 to the SCN and also mentioned at the hearing, it is not correct that the Company did not validate from NADRA Verisys in respect of the identity documents of clients, nominees, joint account holders, board of directors, trustees, administrators, executors and authorized persons of clients. This was duly done through NADRA Verisys facility of Bank AL Habib Limited, the holding company of the Company, which has foolproof advance system of verification from NADRA, including biometric verification. The Company's obligation of verification from NADRA stands fully fulfilled. Evidence of 15 customers' NADRA Verisys that were carried out at NADRA Verisys facility of Bank AL Habib Limited are attached, marked "A".*

We had also mentioned in the reply and at the hearing that the Company had already applied to NADRA for Verisys Identification of the clients, nominees, joint account holders, board of directors, trustees, administrators, executors and authorized persons of clients. We are pleased to inform you that NADRA vide its letter dated February 25, 2020 accepted the Company as its customer and had forwarded us an Agreement signed by





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NADRA for Company's signature. The Company has already signed and delivered the same to NADRA. Copies of the NADRA's letter and the agreement are attached, marked-B.

ii. We confirm that screening of legacy portfolio, information of directors, authorized persons, beneficial owners, or ultimate beneficial owners is available with the Company and periodic monitoring is carried by the Company and full data is maintained as per its AML/CFT policy.

6. I have examined the submissions made in writing and during the hearing as well as issues highlighted in the show cause notice and requirements of the Regulations. The facts of the case may be summarized as under:

(i) As regards to two corporate clients, the Company in its reply to thematic review furnished that these clients were marked as high risk on November 9, 2019. As stated, the said accounts were marked as high after the issuance of guidance notice, according to which regulated entities were required to submit internal risk assessment covering all aspects including transnational TF Risk by November 10, 2019 and the Company completed its internal risk assessment by November 9, 2019. The Company also furnished copies of Form 29 (list of directors) of the two high-risk corporate clients and informed that relevant details were available at the time of inspection. Vide email dated March 2, 2020, it was confirmed that screening of legacy portfolio, information of directors, authorized persons, beneficial owners, or ultimate beneficial owners was available with the Company and periodic monitoring was carried by the Company and full data was maintained as per its AML/CFT policy. The Company, however, needs to substantiate that its screening of clients, board of directors, authorized persons, beneficial owners, is in compliance of the requirements of Regulations and its database is updated.

(ii) As per available record, the Company was using NADRA Verisys facility of Bank AL Habib Limited and at the time of inspection, it was in the process of obtaining Verisys facility from NADRA. In 15 instances which were highlighted on sample basis, NADRA Verisys was not performed and the list was provided through thematic review. The Authorized Representatives were of the view that account with the Company could not be opened without NADRA Verisys clearance from its holding company i.e. Bank AL Habib Limited. The Company vide its reply dated February 18, 2020 also furnished extract of chairman of the Company's note dated October 5, 2018, which is reproduced as below:

"It may be appreciated that being a subsidiary of Bank AL Habib Limited, our Company (Al Habib Capital Markets Private Limited) places a very high priority on conducting all business dealings in conformity with the applicable laws and regulations, specially AML and KYC requirements, as laid down in the AML/KYC policies approved by the BAML's board of directors since December 2007, when there was no requirement of KYC/CDD prescribed by the honorable Commission or the Pakistan Stock Exchange. Our chairman therefore advised us to be guided by the contents of those policies of BAML and use NADRA Verisys facility of BAML, as appropriate and relevant to our business."





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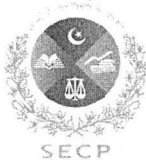
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From above, it transpires that the arrangement of the Company with its holding company i.e. Bank AL Habib Limited existed for NADRA Verisys facility and the assurance of the Authorized Respondents that any account with the Company was opened after securing NADRA Verisys reports from Bank AL Habib Limited. However, vide email dated March 2, 2020, copies of NADRA Verisys reports in 15 cases of non-compliances mentioned in SCN, were submitted by the Company, which were obtained during the month of February 2020, i.e. subsequent to the inspection carried. Moreover, in case of a client, who was overseas Pakistani, her National Identity Card Overseas Pakistanis (NICOP) was inactive and NADRA Verisys report was not made available rather copy of NICOP was furnished. The stance taken by Authorized Representatives that the identity documents were validated through NADRA Verisys facility of Bank AL Habib Limited in 15 instances of non-compliances highlighted is negated due to the fact that in cases where reliance on third party verification is placed, then in terms of regulation 12(1)(a) of the Regulations such information of identification of customers or their beneficial owners, is immediately required to be obtained. The Company, however, did not substantiate that for the purpose of identification of its clients, NADRA Verisys reports were obtained.

- (iii) As per reply submitted, the copy of CNICs of the seven trustees of a trust were duly obtained and were verified by using Bank AL Habib Limited NADRA Verisys facility. In this connection, a copy of email dated March 25, 2019 was shared in terms of which the Company shared names of seven trustees along with their CNICs with Bank AL Habib Limited and a confirmation was on record that no person matched the list of proscribed persons/entities. The Company also shared with the Commission vide its letter dated February 18, 2020, copies of CNICs of the seven trustees. Moreover, the Respondents also submitted resolution passed by trustees of a trust, vide dated November 7, 2017 authorizing its investment advisor to open account with the Company and relevant resolutions of trustees to appoint new trustees were furnished. However, the Company needs to acquire and to use requisite information and data obtained from a reliable source to determine natural persons exercising ultimate effective control and this requires a continuous monitoring.
- (iv) The Authorized Representatives submitted that the Company was in practice to verify the identity of natural persons who ultimately had controlling ownership interest and for the purpose Form 29 (list of directors) of the corporate clients were obtained. Vide letter dated February 18, 2020, the Company provided copies of Form 29 (list of directors) issued dated February 4, 2019. In case of a corporate client, it was however, noticed that its directors included foreigners as well, for which the Company needs to strengthen its mechanism for identification and monitoring of individuals.

7. I have gone through violations mentioned in the SCN, relevant replies furnished and stance taken during the hearing and past record of compliance of the Company. Here, I





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would like to emphasize that it was an admitted fact that the Company was relying systems and controls measures adopted by its holding company i.e. Bank AL Habib Limited and it was in the process to implement measures for identifications, monitoring, and periodic monitoring of its clients, their authorized persons, trustees and ultimate beneficial owners. A copy of letter dated February 25, 2020 of NADRA was furnished in terms of which correspondence was made to obtain NADRA Verisys facility in order to ensure compliance of the regulation 6(4) of the Regulations. The Respondents during the hearing informed that it had almost 1400 clients. Whereas, per thematic review it was having 160 high risk clients and 15 nominees who belonged to high risk jurisdictions / geographic locations, therefore, identification, screening, monitoring and periodic monitoring of its clients for the purpose of compliance of the Regulations is utmost importance. The Respondents have also highlighted that certain observations were not communicated through letter of findings by the inspection team and emphasized that supporting documents were available in compliance of the requirements of the Regulations. Therefore, in order to verify the claim of the Respondents, they were given opportunity to provide copies of evidences of compliance of various instances highlighted. Scrutiny of documents submitted with the Commission revealed that NADRA Verisys reports of 15 instances of non-compliances were obtained during the month of February 2020 i.e. subsequent to the onsite inspection, which transpires that such evidences of compliance requirements of annexure-I of regulation 6(4) of the Regulations for the aforesaid clients were not available at the time of inspection.

8. Keeping in view, I, am of the view that in terms of annexure-I of regulation 6(4) of the Regulations, identity documents i.e. CNICs or NICOP were not validated through NADRA Verisys facility and Versisys reports in 15 instances of non-compliance, so submitted, were of dates subsequent to on-site inspection carried, hence, the Company has violated the aforesaid requirements of the Regulations. However, I have also noted that Company has either rectified or in the process of rectifying the alleged defaults to comply with applicable framework. Therefore, in terms of powers conferred under section 40A of the Act, a penalty of Rs.100,000/- (**Rupees One Hundred Thousand**) is hereby imposed on the Company. Moreover, I hereby direct the Company to furnish a compliance report within thirty days from the date of receipt of this order to Brokers Compliance Department of SMD that (i) its NADRA Verisys is fully operational or in case of any delay reason along with expected time till when the same would be operational.

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

Ali Azeem Ikram

Executive Director/HOD (Adjudication-I)

Announced on March 20, 2020, Islamabad

