



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Through Courier

Before the Executive Director (Adj-I)

In the matter Show Cause Notice Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997.

Date of hearing:

16 January 2020

Present (on behalf of Alfalah GHP Investment Management Limited

Ms. Maheen Rahman, CEO
Mr. Shariq Hashmi, Head of Compliance
Mr. Noman Soomro, Head of Operations

O R D E R

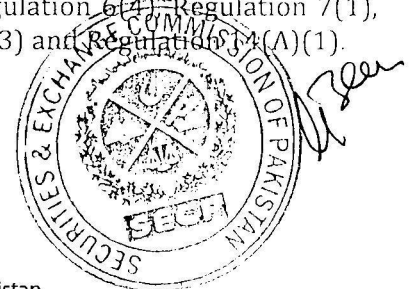
This Order shall dispose of proceedings initiated through the Show Cause Notice (the "SCN") bearing No. SCD/ADJ/AGIML/2019/06 dated **January 06, 2020** issued under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act"), against the following Directors and the CEO of **Alfalah GHP Investment Management Limited** ("AGIML", the "Company" or the "AMC"), and Alfalah GHP Investment Management Limited (the "**Respondents**").

Sr.	Name	Designation
1.	Mr. Dominique Russo	Chairperson
2.	Mr. Ali Sultan	Director
3.	Mr. Hanspeter Beier	Director
4.	Mr. Abid Naqvi	Director
5.	Mr. Tufail Ahmad	Director
6.	Ms. Edward Hurt	Director
7.	Ms. Mehreen Ahmed	Director
8.	Ms. Maheen Rahman	CEO and Director

2. An onsite inspection (the "**Inspection**") of the Respondent was conducted by the Commission to ascertain compliance with requirements contained in Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the "**AML Regulations**").

3. The Inspection revealed prima facie non-compliances with the AML Regulations, detailed as under:

- (i) Several deficiencies in the record / documentation of investors selected on sample basis had been observed which were in violation of several regulatory provisions of the AML Regulations, which included Regulation 3(1), & 3(2), Regulation 6(4), Regulation 7(1), Regulation 9(4) read with Regulation 9(2), Regulation 13(3) and Regulation 14(A)(1).



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- (ii) The AML and CFT related policy of AGIML covered screening of directors only, and did not include screening of major shareholders (beneficial owners) who may have been different from the directors, hence constituting violation of Regulation 4 (a) of AML Regulations.
- (iii) Review of the internal audit reports revealed that AML/CFT audits had not been conducted during last one year. Review of the minutes of the audit committee revealed that audit committee / board had not been apprised of the compliance status of the entity with respect to AML and CFT related regulatory framework, thus constituting violation of Regulation 4 (d) of AML Regulations.
- (iv) It was noted that CNICs of 413 investors were found expired in violation of a Regulation 6(4) of AML Regulations.
- (v) AGIML was only screening the names of the corporate/ trust and other non-individual organizations and their authorized signatories against the lists of proscribed/banned persons, while the names of directors, trustees and beneficial owners were not included in the screening process, thus constituting violation of Regulation 6(5a) AML Regulations.
- (vi) Review of the unit holder system (UHS) of the AMC, revealed that there was no provision in the UHS to capture the details of the directors / beneficial owners of the non-individual investors. Consequently, the list, which was extracted from the system for purpose of screening, did not contain such details either, hence resulting in violation of Regulation 7(1) (b) of AML Regulations.

4. Accordingly, the Commission took cognizance of the aforementioned facts and served the SCN requiring the Respondent to explain its stance in person on January 16, 2020. The Respondent vide its letter dated January 14, 2020 submitted reply to the SCN, which is reproduced below:

..... Please find below our response related to observations in SCN.

AGIML Response on Point # 5:

Ensuring effective implementation of KYC/CDD remains prime focus for the Company as per AML/CFT Regulations 2018. AGIML as a responsible entity has been taking appropriate steps in identifying, assessing and understanding money laundering and terrorism financing risks in relation to its customers, the jurisdiction where the customers are from and the products (Mutual Fund), services, transactions and delivery channels.

AGIML has developed the Risk Assessment criteria based on various factors/elements/determinants that constitute any money laundering or terrorist financing risk; such factors are nature of the customer (potential client), customer background, industry or business activities, products and services, country of origin or operations etc. These components/factors are the key drivers in determining the level of risk that can be from high to low depending of the gravity or the threat attributed to any of these components.

The context of risk-based approach as a methodology to assess risks is to provide quantitative results to assist in the decision making process towards the level of risk or threat. By using this method, the risk

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mitigation plan can be set by implementing controls to mitigate these risks and establish the risk levels for the ongoing due diligence on customers. Risk assessments are generally based on perception, subjective judgment and experience of the Company about risks regarding various factors/elements/determinants therefore the model developed provides a platform to the persons involved in Investor Service and Compliance Departments to apply their experience and judgment to assess the risks associated with the customers.

5.1 Client No 1

Regarding Hon'ble Commission observation on classification of corporate entity as "Low Risk", kindly note that Alfalah GHP Investment Management Limited (AGIML) maintained client relationship since 2005 with **Client No 1** established/registered in Panama. The unit holder account opened with a sole transaction undertaken on July, 16th, 2005 with sum amount of PKR 15.185mn and proceeds for above transaction were channeled through Bank Alfalah (BAFL) with the approval of the State Bank of Pakistan (SBP) for the purposes of investment in mutual fund. The account was introduced byone of the Shareholder/Sponsor of AGIML..... **Client No 1** was investment advisory client oftherefore it had previously been classified as "Low Risk" by us.

Regarding the observation of passports expiry of two natural directors, we reiterate our previous submission that no response had been received from their side yet on our email in this matter

With regards to Hon'ble Commission observation that one Director had been convicted in United States District Court, we reiterate our previous submission that the Director was not included in any Prohibited List of OFAC, UNSC, EU banned person list. Further, the Director was convicted for tax evasion not for money laundering or terror financing as per legal judgment.

Whereas observation concerning no periodical review of the account and source of income, we would like to inform the Hon'ble Commission that subsequent to investment of PKR 15.0mn, no further transaction activity/behavior outside the expected norms posing unusual complex patterns of transactions were witnessed throughout this time by the above unit holder, possibly raising any signs of red flag and thus reduced level of monitoring and EDD measures to be taken by us. Though the company incorporated in high-risk jurisdiction; however the transaction flow as discussed in aforementioned paras originated from high risk jurisdiction country into Pakistan and thereafter till date no cross border movement of funds witnessed from the customer. Moreover, to place stringent controls in this respect, we have undertaken additional measures to safeguard and screen potential transactions in future from high risk jurisdiction countries. We have filed an STR in this regard for further investigation by FMU on December 2, 2019 and till date not received any response from FMU.

5.2 Client no 2

AGIML started its relationship with **Client no 2** in 2009 with an investment amount of PKR 36.61 mn (25th August, 2009). The foundation run by 90 years old Dr..... who is the founder of The Medical Laboratories in Pakistan amplifying women's voices in the world of science and diagnostic advancements. During the course of SECP inspection, AGIML furnished following documents in support of existing investments of the Foundation:

- Board Resolution dated August 19, 2009
- Certificate of Registration
- Financial Statements for the period ended June 2008 and June 2018
- Memorandum, Rules and Regulations

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- e) Trustees CNIC and Verisys reports
- f) Investment and Redemption Forms

Regarding contention that the investor was never reviewed periodically, we would like to express that AGIML conduct periodic review of investments meeting the prescribed threshold in compliance with provisions of now repealed Circular 09 of 2017 along with Risk Levels marked for individual transactions undertaken by AGIML customers on monthly basis for reporting to the Hon'ble Commission. As per the spirit of the then repealed circular, AMCs were required to report only investment amount transactions to the Commission having equal to or greater than the threshold of PKR 50mn in case of Trusts and partial redemptions made on Feb'14 PKR 11.40mn and Jun'18 PKR 3.0mn were reported to the Commission while performing monthly periodic review of all unit holders' transaction activities. Since the initial investment and subsequent redemptions were within the declared income, usage of funds as disclosed in the financials for the period ended June 2008; thus we held a view that to raise risk level and obtain additional source of income were required upon fresh inflows (i.e investment activity) into the account that exceed AGIML own knowledge of above customer income source.

5.3 Client no 3

Client no 3 is the son of a Senator in Pakistan Senate. AGIML Compliance Department at the time of account opening performed Enhanced Due Diligence (EDD) including searching of customer background and screening of name from updated UN sanctions and other proscribed person lists maintained by us from the perspective of ML/TF. Based on the outcome of EDD and internal risk assessment using In-house risk based scoring module developed in accordance with latest guidelines and AML/CFT Regulations, customer resultantly was marked "High Risk" and a 'PEP' account with reporting to Senior Management for further approval after which the relationship was established with the said customer. Furthermore, based on our EDD queries, the customer provide the Form A, Form 29, Audited Financials and recent Bank Statement ofbank account maintained with Bank Alfalah Limited for our record in respect of income assessment.

We would like to apprise the Hon'ble Commission that above customer account was opened only after undertaking AML & CFT measures in accordance with Sub regulations (2),(3) and (4) of Regulation 9 of the AML and CFT Regulations 2018.

5.4 Client no.4

We would like to apprise the Commission that since the requirement of obtaining registration certificate is for registered concerns only, thus the customer having unregistered proprietorship business did not provide the said document. However documents pertaining to identity, visiting card, sole proprietorship declaration on business letterhead, Visit Report, Tax filing status along with 1 year personal Bank Statement was submitted to AGIML for ML/TF risk analysis and for knowledge of the customer business. Please find attached as Annexure 8, customer Risk Profile Form. Moreover the customer was marked as "High Risk" based upon her nature of business and as per risk classification factors mentioned in clause 1 (e) and 1 (I) of AML and CFT Guidelines dated September 2018 under the heading "High-Risk Classification Factors".

We apprise the Commission that the Tax Directory is only available for prior year 2016 and 2017, and these directories are related to income generated in FY 2015 and FY 2016 only. Further the customer paid Rs. 36,403/- in 2016 and 59,784/- in 2017. Please note that any income generated after FY 2018 and FY 2019 could not be assessed out through previous tax directories. Customer is generating funds from her existing business as per available source of funds.



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AGIML Response on Point # 6, 7 and 8:

We would like to apprise the Hon'ble Commission that AGIML during the process of ongoing transaction monitoring and scrutiny; due care and diligence has been taken by AGIML Compliance Department, which involves critically analyzing and identifying unusual pattern of transactions conducted and risk profile of fund in which such frequent activities undertaken etc. Thus, any likelihood of suspicion found is duly reported to the Senior Management for further action.

Previously, AGIML was only screening the details of authorized signatories. This was due to system limitations to capture detail of the directors and beneficial owners of the accounts and screening of any change in directors and beneficial owners in the UHA system application. AGMIL worked with Vendor and removed such restriction in the UHA system application soon after completion of recent AML Inspection.

Regarding progress on above, the UHA Department had updated in case of active corporate clients, all available information with AGIML in relation to directors, trustees and other beneficial owners of the accounts along with conducting screening of these beneficial owners' using most updated UN Sanctions and NACTA Lists. Resultantly based on above screening process, no unusual or suspicious transactions were detected/observed and therefore the management did not consider filing any STR in relation to above exercise performed.

Presently, AGIML is at an advanced stage of implementing state of the art Anti Money Laundering and Screening software that would provide significant support in performing sanctioned screening, potential and existing customer name check for PEP and ML/TF element. It is expected that the above system will be deployed by end of February 2020 considering volume of legacy data and information gathering. This to a greater extent would mitigate likelihood of entering into business relationship that involves any sanctioned person/entity or person associated with a sanctioned person/entity/country.

AGIML Response on Point # 9:

We would to apprise the Commission that all the Directors and Beneficial Owners who might be different from Directors is inducted in system as available and being screened as per the requirement of Regulation 4(a). The same is updated in Anti Money Laundering (AML), Customer Due Diligence (CDD) & Know Your Customer (KYC) Policy which will be presented in the upcoming meeting of Board of Directors for approval.

AGIML Response on Point # 10, 11, 12, 13 and 14:

The Internal Audit Plan approved for the year 2018-19 was presented to Audit Committee before implementation of AML / CFT Regulations and Guidelines in September 2018 therefore, it did not contain separate section for audit of AML / CFT area.

The Compliance department of AGIML, in coordination and consultation with Internal Auditors, framed Anti Money Laundering (AML), Customer Due Diligence (CDD) & Know Your Customer (KYC) policies and procedures of AGIML in line with the requirements of AML / CFT Regulations. The same were approved by the Board of Directors on the recommendation of the Audit Committee in October 2018. In October 2018, the Internal Auditors decided to carry out half yearly audits of AML / CFT starting from December 2018. In December 2018 and June 2019 audits, the Internal Auditors did not come across any major findings in AML / CFT area and they did not specifically mention work done in respective internal audit reports. Further, the Internal Auditors also carried out audits of AGIML's six monthly risk assessment (December 2018 to May 2019) and annual risk assessment (June 2018 to May 2019) and

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presented results in their June 2019 internal audit report to Audit Committee for its review. We would further like to inform the Commission that our Internal Auditors have included AML / CFT as separate area for audit in the Internal Audit Plan for the year 2019-20. The plan was approved by the Audit Committee in its meeting held on August 29, 2019. (Attached as Support I in Annexure A). The audit was to be conducted halfyearly in December 2019 and June 2020, however AGIML would request the Internal Auditors to review implementation of AML / CFT regime on quarterly basis.

AGIML Response on Point # 15 and 16:

We would like to apprise the Commission that as per the requirement of Regulation 7(1) (b) of AML Regulations 2018, AGIML has developed an automated system to generate one month advance alert for expired CNIC of Unit holder in its accounting (UHA) software application. The same was previously monitored through manual process. We are sending request to Unit Holders for updating their expired CNICs on their mobile phones on monthly basis. We reiterate and confirm to Commission that no account is opened on expired CNIC. We understand that Company should determine whether the customer is acting on behalf of another person, and should then take reasonable steps to obtain sufficient identification data such as copy of Valid CNIC to verify the identity of the beneficiary or account holder.

Conclusion:

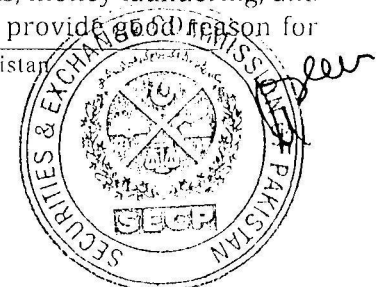
We would like to apprise the Commission that Alfalah Investments always acted in good faith with best intention and in accordance with its statutory responsibilities as envisaged in the AML and CFT Regulations of the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2018 and always give due consideration to best interest of its unit holders.

5. The hearing in the matter took place on **January 16, 2020** wherein Ms. Maheen Rahman, CEO, Mr. Shariq Hashmi, Head of Compliance and Mr. Noman Soomro, Head of Operations appeared on behalf of the Company. They reiterated their assertions contained in the written reply.

6. I have analyzed the facts of the case, considered the documentary evidence placed on record, and the arguments put forth by the Respondent Company. I am of the considered view that the submissions by AGIML are not plausible on the following grounds:

- a. The justification of the AMC with regards to the account of **Client no 1**, that since only a single transaction had been undertaken and proceeds for the transaction had been channeled through Bank Alfalah (BAFL) with the approval of the State Bank of Pakistan (SBP) for the purposes of investment in its mutual fund, therefore it had been categorized as low risk, is not tenable. I am of the considered view that AGIML was required to exercise its own vigilance even if a certain transaction was taking place under the auspices of a state regulatory authority or even if one of the Shareholder/Sponsor of AGIML had introduced the account. AGIML needs to clearly understand that it is incumbent upon the AMC to conduct its own due diligence of the customer with which a business relationship is being established, irrespective of who is recommending the customer. The responsibility of the AMC is not bottled down due to the reason that a transaction has been routed through its own bank.
- b. The AMC failed to take into account that the company had been incorporated in a high-risk jurisdiction-Panama. The effect of the Panama Papers has been explosive-the documents allegedly revealed a global system of undisclosed offshore accounts, money laundering, and other illegal activity. In my considered view, the Panama Papers provide a good reason for

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concern and name of any account holder or beneficial owner appearing in these papers ought to have been a matter of apprehension and should have been dealt with by AGIML proactively.

- c. With regards to the submission that the Director of **Client no 1** who had been convicted in United States District Court, was not included in any Prohibited List of OFAC, UNSC, EU banned person list, since he was convicted for tax evasion and not for money laundering or terror financing as per legal judgment, is not considered tenable. It was the responsibility of the AMC to ensure that adequate due diligence had been exercised while establishing the business relationship with a customer and the laxity exercised in the matter indicates that the AMC had not taken appropriate steps to identify, assess and verify the credentials of the Director and consequently the risk assessment

The aforementioned leads me to believe that AGIML has contravened Regulation 3(1) and 3(2) of the AML Regulations.

- d. With regards to observation pertaining to **Client no.2**, AGIML's claim that it conducts periodic review of investments meeting the prescribed threshold in compliance with provisions of the repealed Circular 09 of 2017 along with Risk Levels, marked for individual transactions undertaken by AGIML customers on monthly basis for reporting to the Commission is not tenable. The AML and CFT Regulations, 2018 were effective immediately after their issuance and warranted that AGIML initiate the process of periodic review and monitoring immediately. A delay in grasping the gravity of the AML/CFT regime indicates weakness in responsiveness of the management.
- e. With regards to observation pertaining to **Client no.3**, AGIML has contended that customer account was opened only after undertaking AML & CFT measures in accordance with Sub regulations (2),(3) and (4) of Regulation 9 of the AML and CFT Regulations 2018, which does not appear to be adequate argument since appropriate source of funds invested with it was not available on record, in violation of Regulation 9(4) read with 9(3) of AML and CFT Regulations.
- f. With regards to **Client no.4**, it is a matter of concern that the AMC had not conducted adequate enhanced due diligence (EDD), despite the fact that the statement of account of respective client indicated large amount of receipt in the account, and the same had been invested with AGIML. As a part of the EDD process, the only document that was obtained from the client was the aforementioned bank statement. No further probing was conducted by AGIML to determine the source of these funds. Moreover, the amount of the tax paid showed that the taxable income earned by the investor was much lesser than the amount of the investments made by this investor in the AMC. The AMC's contention that the Tax Directory was only available for prior year 2016 and 2017, and income generated after 2018 and 2019 could not be assessed from the previous tax directories, is not plausible. It was incumbent on the AMC to obtain all the requisite information/documents, especially the evidence that ascertained the source of income, before establishing customer relationship. It is pertinent to mention that in this instance although the customer was marked as High Risk, adequate efforts to determine source of income/investment was based on assumption that the customer was generating funds from her existing business, thus constituting violation of Regulation 9(4)(b) read with Regulation 9(3) of AML and CFT Regulations 2018.

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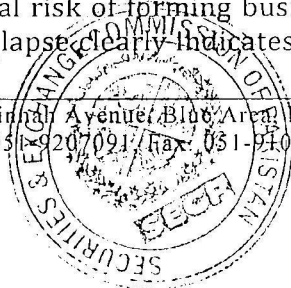
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- g. I have taken into account that AGIML has admitted that not all the Directors and Beneficial Owners who were different from Directors were being screened and it was after the observation of the inspection team that the same had been inducted in system and were now being screened in accordance with the requirement of Regulation 4(a). I have also noted that the same is being updated in Anti Money Laundering (AML), Customer Due Diligence (CDD) & Know Your Customer (KYC) Policy. Nevertheless, non-compliance of Regulation 4(a) by AGIML has been established.
- h. I have noted the arguments of AGIML in response to the allegation of contravening Regulation 4(d) of the AML Regulations. The argument that Internal Audit Plan approved for the year 2018-19 was presented to Audit Committee before implementation of AML / CFT Regulations and Guidelines, in September 2018, therefore it did not contain separate section for audit of AML / CFT area is not tenable. The AML / CFT Regulations were issued in July 2018 and warranted that they be implemented immediately. Delay in adopting the AML/CFT Regulations indicated weakness of responsiveness of the management.
- i. I have taken into consideration that the Anti Money Laundering (AML), Customer Due Diligence (CDD) & Know Your Customer (KYC) policies and procedures of AGIML in line with the requirements of AML/CFT Regulations were approved by the Board of Directors(BoD) on the recommendation of the Audit Committee in October 2018, which indicates the resolve of the BoD to implement the AML/CFT Regulations.
- j. I have observed that the internal auditors during the audit in December 2018 and June 2019 audits did not specifically mention the scope of the implementation of AML & CFT Regulations that was audited. Therefore, it could not be established that AGIML was compliant with the requirement of Regulation 4(d) of AML and CFT Regulations 2018, since the Internal Auditors did not indicate any major lapses with respect to AML/CFT Regulatory framework.
- k. I have also taken into account AGIML's claim that the Internal Auditors have included AML/CFT as separate area for audit in the Internal Audit Plan for the year 2019-20 and it was approved by the Audit Committee in its meeting held on August 29, 2019. However, no evidence was provided by AGIML to demonstrate that the BoD had been informed of the same. The aforementioned leads me to believe that the board was not aware of the compliance status of the AMC with the AML/CFT regulatory framework.
- l. The fact that there were 413 investors whose CNICs were found to be expired, constitutes violation of Regulation 6(4). In my view, in the absence of requisite documents/information, the screening of unitholder database is rendered ineffective and does not serve the purpose/objective of screening of unitholders/ beneficial owners completely. The absence of such critical document such CNIC, is likely to expose the company to inefficient screening of its customers with SROs/notifications issued by NACTA/provincial governments/ Ministry of Foreign Affairs, etc. and simultaneously expose the AMC to a potential risk of forming business relationship with a proscribed person. The aforementioned lapse clearly indicates violation of Regulation 6(4) of AML and CFT Regulations.

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7. In my view **AGIML** is an asset management company with a diverse customer base and a professional management. It is the obligation of the management to ensure that it is implementing the AML and CFT Regulations in its letter and spirit. It is important to understand that any lapse in compliance of the same poses a serious threat to national interest. Therefore, there is a need to make serious and effective measures to mitigate money laundering and terrorist finance risk. Therefore, the Respondent is advised to ensure major focus on establishing and maintaining comprehensive risk management systems and controls to enable it to identify, control and monitor risks and deficiencies in relation to AML/CFT regime.

8. It is pertinent to mention that the nature of the role of Board of Directors demand that the board be proactive and take a stronger interest in management activities to ensure impact on discharge of its fiduciary responsibilities. The Board needs to stay informed of how the organization is being managed to protect its legal responsibilities at the same time the board should maintain the balance and be careful not cross over into performing management duties. However, the Respondents could not furnish any evidence regarding efforts to perform oversight of the policy implementation. The only statement in the reply that indicated the BoD's oversight was that the BoD on the recommendation of the Audit Committee in October 2018 approved the (AML) / (CDD) & (KYC) policies and procedures of AGIML. I am of the considered view that the Respondents on their part had a fiduciary responsibility for oversight of AGIML, among other, to ensure compliance of the mandatory legal framework. The Respondents had devised a mechanism to undertake a review of the procedures and protocols established by the management to implement the policy framework approved by them to enable AGIML to identify any shortcomings in order to improve and strengthen its operational procedures and systems in general and with specific reference to AML/CFT, but failed to ensure implementation of the same. It is observed that the Audit Committee, either for information or approval, was presenting no reports to the BOD. The Audit Committee failed to furnish the reports pertaining to AML/CFT while the BOD failed to intervene and demand the implementation status of the policy that it had devised. This indicates laxity on part of both the Audit Committee and the BOD towards their responsibilities.

9. The aforesaid depicts that the BOD had limited themselves to providing a policy direction only. 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 neither followed up on their directives with the management, nor did they question the management about strengthening of processes and procedures with respect to AML/CFT regulations.

10. However, based on my observation, I am of the considered view that leniency on non-compliance towards Regulation 3(1),3(2),4(a),4(d),6(4), 6(5a),7(1), 9(2),9(4) read with 9(3) and 13(3) and Regulation 14(A) of AML and CFT Regulations, 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 by imposing an aggregate fine of **Rs.1,600,000/-** (Rupees One Million Six Hundred Thousand Only) provided equally



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amongst all the Directors including the Chief Executive and **Rs. 5,00,000/-** (Rupees Five Hundred Thousand Only) on Alfalah GHP Investment Management Ltd.

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

12. This order is 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)
Executive Director (Adjudication-I)

Announced on:
March 24, 2020 Islamabad.