



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

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

In the matter of Show Cause Notice issued to Agahe Pakistan and its Directors

Date of Hearing	March 26, 2020
Present at the Hearing Representing the Respondents	Mr. Barak Ullah, Chief Executive Officer, Mr. Muhammad Khalid, Company Secretary, Mr. Saad Amir Masood, Manager Risk & Compliance

ORDER

This Order shall dispose of the proceedings initiated against Agahe Pakistan (the "Company") and its board of directors through Show Cause Notice No. **SCD/Adj-I/Agahee/21/2020/285** dated March 18, 2020 (the "SCN") issued under section 40A of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 ("Act") for violations of the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2018 ("AML Regulations") and under section 282 J(1) of the Companies Ordinance, 1984 (the "Ordinance") for violations of the NBFCs and Notified Entities Regulations, 2008 ("NBFC Regulations"). In this connection, a separate addendum dated March 25, 2020 to the Company was also issued as the definition of Respondents given in para (13) of the SCN did not address the Company as Respondent. The Company through its email dated March 26, 2020 acknowledged the SCN addressed to the Company. The Company and its board of directors (the "BOD") are hereafter referred to collectively as (the "Respondents"). The BOD of the Company is comprised of the following:

- (i) Mr. Barak Ullah, Chief Executive;
- (ii) Ms. Sabahat Batool, Chairperson;
- (iii) Mr. Suhail Saleem, Director;
- (iv) Ms. Bushra Naheed, Director;
- (v) Mr. Abid Aman Burki, Director;
- (vi) Mr. Ali Raza Qamar, Director;
- (vii) Mr. Muhammad Yaqoob, Director;
- (viii) Ms. Sana Zahid, Director.

2. Brief facts of the case are as follows:

- (a) The Company was set up on January 22, 2016 as a non-profit organization under section 42 of the Ordinance. The Company subsequently obtained license to undertake investment financial services as Non-Banking Microfinance Company with effect from October 4, 2016. In order to examine and verify the compliance of NBFCs with their TFS screening obligations under AML/CFT regulatory framework, certain information was obtained pertaining to names & CNIC numbers of the borrowers, spouse, beneficial owners and nominees of clients vide letter/email dated January 10, 2020. The Company provided information vide its email dated January 31, 2020.
- (b) The thematic review highlighted instances where the Company, *prima facie*, failed to comply with the applicable provisions of AML Regulations and applicable regulatory framework.





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3. In view of the findings of thematic review, the Commission took cognizance of the matter by issuing SCN dated March 18, 2020 and addendum dated March 25, 2020 to the Respondents for, *prima facie*, acting in contravention of the AML Regulations, the Ordinance and regulatory framework of NBFCs. 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 AML Regulations, and under section 282 of the Ordinance for non-compliances of the NBFCs Regulations of 2008. The aforesaid SCN states that the Commission vide its email dated November 19, 2019, advised all non-bank micro finance companies to screen the names and CNIC numbers of their clients, beneficiary/user of funds, co-borrowers and nominees of microfinance borrowers and to share the results. The Company vide its email dated November 25, 2019 informed that there was no match found in the database. However, despite the aforesaid it was revealed that:

- (i) Loan was granted to a client whose spouse, who was the beneficial owner/user of funds, is a proscribed person as per NACTA's list.
- (ii) Loan was granted to a client, whose nominee was a proscribed person as per NACTA's list.

The Respondents subsequently recalled the said loans and filed Suspicious Transaction Reports (STRs) with Financial Monitoring Unit (FMU) on February 4, 2020 after being intimated of the findings of thematic review.

In view of aforesaid, the Company by, not properly screening its borrowers' user of funds/nominees information from the list of proscribed persons, forming a relationship with associates/facilitators of proscribed persons and for delay in filing of STRs have, *prima facie*, failed to ensure compliance, in contravention to the requirements provided in regulation 6(5a) and regulation 6(3)(a), and regulation 13(7) of the AML Regulations.

4. A written reply dated March 24, 2020 of aforesaid SCN was received from Mr. Barak Ullah, chief executive of the Company. He in his reply, inter alia, submitted that:

We appreciate and acknowledge SECP role on creating awareness and taking capacity building initiatives for companies like AGAHE Pakistan to counter Money Laundering and Terrorism Financing in our country. We are law abiding organization which is evident from our timely and accurate information submission since incorporation of Company. We also understand the importance of the compliance especially in current global scenario. We have taken all actions required from us and tried our best to meet the targets. You are well aware that the global financial issues are getting complex and we are also on our way to achieve the required standards.

Regarding your show cause notice, we would like to advise that the issue you reported is obviously was a matter of concern for us. So immediately after detection of inadvertent error in reporting, AGAHE Pakistan has taken this issue very seriously and tried to ensure compliance of AML & CFT Guidelines and Regulations, 2018 issued by SECP. We have taken all steps to update our AML/CFT system in line with your guidelines and ensure constant improvement. We would also like to submit certain facts regarding two cases where spouse and nominee of the borrower records matches with NACTA 4th Schedule list as follows:

Prior to November 2019 the SECP main focus was the screening of borrowers for any possible match with proscribed persons list and accordingly we continue to screen our potential





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borrowers from the proscribed persons list before formation of any business relationship. On 3rd July 2019, we received an email from SECP asking information relating to existing clients/borrowers of our entity on a Microsoft excel format.

We have checked all our existing clients/ borrowers from our data base for any possible match with proscribed persons list and shared the information on the required excel format on 15th July 2019.

Hereafter, we received an email from your office on 19th November 2019 advising to screen the names and CNICs of all clients, spouses, beneficiary/user of funds, co-borrowers and nominees of borrowers from the proscribed persons list and to share the results by 25th November 2019. We used to take borrowers personal information as well as spouse/nominee/beneficial owners' information on loan application form and enter the same into our loan management system, however reports of spouse/nominee/beneficial owner's CNIC was not available in system at that time. We screened our 28,185 active borrowers from our system and found no match with proscribed persons list. Further we asked our 24 branches to screen 28,185 borrowers' spouse/nominee/beneficial owners for any possible match with proscribed persons manually. This exercise was performed in 6-days and all the 24 branches did not report any match with proscribed persons. Accordingly, we reported no match with proscribed persons to SECP on 25th November 2019.

Further to SECP letter SCD- S&ED/SW-11/2019-20/072 dated January 10, 2020 seeking data of customers, beneficial owners, guardians and nominees on excel format by 31st January 2020. Accordingly, we have provided you the requisite data on excel format on 31st January 2020. Due to inadvertent error on the part of our branch staff, one of spouse and other nominee of the borrower were gone unidentified at the time of manual screening with the proscribed persons lists. Prior to SECP Email dated 19th November 2019, the main focus of our screening were the borrowers for any possible matches with proscribed persons list, accordingly no matches of our borrowers were found with the list of proscribed persons till date. One of the loan amounting Rs. 50,000 was disbursed on 23rd May 2019 and other loan amounting Rs. 50,000 was disbursed on 23rd September 2019. As directed by SECP both loans were immediately recalled on 4th February 2020. STRs were reported and required information regarding client was shared with all relevant stakeholders. Both of these loans were settled during the month of February 2020 and accounts were closed. The confirmation for settlement of loans and closure of account was also sent to SECP on 18th February 2020.

In order to further streamline and improve our AML/CFT system and process we have taken a number of steps in order to ensure that such situation does not arise in future. Firstly, we have decided to undertake a system customization which would allow us to generate a report containing information of borrowers, spouse beneficial owners and borrower's nominees which will help us in avoiding any human error while screening record of customer database. Secondly, we have incorporated a check at branch level where the responsible person (Branch Manager) will be saving a screenshot of clients which will be randomly checked by Risk and Compliance and Audit department on a monthly basis.

Thirdly, we have also incorporated a check by Risk and Compliance where at the time of sharing CIB data, branches will also be sharing the client/spouse/loan beneficiary and nominee data along with CNIC for NACTA screening. This will ensure a dual check and make our checking process more robust and efficient.

Fourthly, we will be screening the entire list of the borrowers/beneficial owners with list of proscribed persons on a monthly basis at Regional Office Level by Risk and Compliance





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Department and if any match is found, immediate action will be taken as prescribed in SECP AML/CFT Regulations, 2018.

Warnings were issued to relevant staff of the branches who are responsible for screening of the beneficial owners and unable to identify and reject the loans of borrowers whose spouse and nominees were in the proscribed persons list.

Keeping in view the above-mentioned grounds we would request you understand that it is an inadvertent error and no direct and indirect benefit is involved for AGAHE Pakistan and its Board so no penalty should be imposed on the Company. However, we will try to make full compliance because maximum possible controls are in place now to cover such inadvertent errors.

5. In order to afford the Respondents an opportunity of making personal representation, hearing in the matter was fixed for March 26, 2020. Mr. Barak Ullah, chief executive, Mr. Muhammad Khalid, company secretary, and Mr. Saad Khalid Masood, manager risk & compliance, being Authorized Representatives, attended the hearing on behalf of all the Respondents. During the hearing proceedings, the Authorized Representatives were advised to explain the reasons for the alleged violations of the AML Regulations and NBFC Regulations. They, *inter alia*, reiterated their stance as was given in writing. Moreover, vide email dated March 26, 2020, the Company through its chief executive informed that the response submitted in hearing be treated for both Respondents i.e. board of directors and of the Company.

6. Also, vide email dated March 26, 2020, company secretary submitted, *inter alia*, following documents for perusal of the Commission:

- (i) AML/CFT Policy duly approved by the board in meeting held on January 19, 2019;
- (ii) Confirmatory email to the Commission regarding full repayment of outstanding loan and closure of accounts of identified borrower's spouse and nominee;
- (iii) Sample screenshots of borrowers/spouse/nominee/beneficial owners verified from the NACTA List;

He also informed that at board of directors' level, following mechanism is in place to address AML/CFT regime:

- (iv) Formulation and approval of entity AML/CFT Policy and it's periodic review for ensuring effective compliance.
- (v) Review and Approval of AML/CFT Risk and Compliance Assessment Checklist and discussion on AML/CFT Know Your Customer (KYC) on six monthly basis (last exercise of this was done on June 2019).
- (vi) To oversee the AML/CFT compliance function, board advised to appoint/designate a compliance officer at the senior management level, who shall be the point of contact with the regulator and LEAs.
- (vii) Compulsory session on AML/CFT regulations on all internal new staff trainings and orientation of entire existing staff on AML/CFT regulations.
- (viii) Board of directors periodically reviews the independent Internal Audit Department's observations/recommendations regarding AML/CFT Compliance.

7. I have examined the submissions made in writing and during the hearing as well as issues highlighted in the SCN and requirements of the AML Regulations, NBFCs Regulations, the Act and the Ordinance as mentioned. The facts of the case may be summarized as under:





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- (i) At the onset, it is stated that it is incumbent upon all regulated entities/persons to make themselves aware of the legal ecosystem in which they operate. They are further mandated to ensure that their conduct remains within the legal framework and they fulfill all mandatory legal obligations. Commission in its role as a facilitator and beneficial regulators undertakes activities to keep the regulated entities/persons abreast and at times remind them of their legal obligations. Furthermore, supervisory role the Commission demands information to check compliance. The Commission in any of its activities has never conveyed that screening has to be limited to clients only. The misconception on part of the Respondents is ill founded.
- (ii) The AML Regulations clearly prohibit the Respondents from establishing any relationship with any person who himself is proscribed or is an associate or affiliate of a proscribed person. It has been admitted that at the time of sanction of the aforementioned loans the Respondents neither screened the beneficial owners/ user of funds nor the associates of the customers. In terms of paras (2) and (3) of the Company's AML/CFT Policies and Procedures, following compliance requirements are mandatory:

2. The Company shall apply customer due diligence measures when establishing business relationship with a customer and when there is doubt and veracity or adequacy of previously obtained customer identification data.

3. The Company's customer due diligence includes: i. Identifying the customer or beneficial owner and verifying the customer's/beneficial owner's identity on the basis of documents, data or information obtained from customer or from reliable independent sources;

However, while sanctioning such loans, due diligence of beneficial owners was not carried although the same was required as per AML/CFT policy of the Company. Accordingly, lapse in screening also led non-filing of STRs in the timely manner. The submission of the Respondents are not tenable and I find them in violation of regulation 6(5a), regulation 6(3)(a) and regulation 13(7) of the AML Regulations. Moreover, I have also noted that the Company's AML/CFT policies and procedures do not require screening of nominees, co-borrowers and ultimate beneficial owners. The aforesaid is also a breach of the requirements of regulation 9(1) and 9(2)(d) of Non-Banking Finance Companies and Notified Entities Regulations, 2008, which prescribe that NBFCs shall ensure prevention of money laundering and other illegal trades and abide by such laws, directives and circulars to safeguard the NBFCs, against involvement in money laundering activities and other illegal trades, and no emphasis was drawn by the Respondents on the same matter.

- (iii) In view of the aforesaid it is my considered that the Respondents prior to thematic review and the proceedings at hand did not grasp the severity and gravity of issues being addressed by the AML/CFT regime. Their approach towards screening of their customers focused more on the business risk. The Respondents on their part had a fiduciary responsibility to ensure compliance of the mandatory legal framework. At the same time, I have observed that the Respondents have been very responsive and forthcoming in efforts to undo the same. I appreciate the efforts to comply with the provision of the AML/CFT Regulations. The Respondents have informed that they have taken steps to (i) system customization enabling the Company to generate report of information of borrowers, spouse, beneficial owners and nominees (ii) review on monthly basis of screenshot record (iii) the branches to ensure sharing of client/spouse/loan beneficiary





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and nominee data along with CNICs and NACTA screening (iv) screening of entire list of the borrowers/beneficial owners on a monthly basis. The aforesaid reveals that Respondents are in the process to ensure compliance of AML/CFT framework, however, they need to further strengthen their diligence process from other reliable sources as well in accordance with AML Regulations.

8. In view of the foregoing and admission made by the Representatives, contraventions of the provisions of AML Regulations have been established. Therefore, in terms of powers conferred under section 40A of the Act, a penalty of **Rs.1,000,000/- only/-** (Rupees One Million Only) is hereby imposed on the Company and a penalty of **Rs.125,000/- only** (Rupees One hundred and twenty five thousand) is imposed on each of eight directors. The penalty (**Rs. 2,000,000/- only in aggregate**) has been imposed on the Respondents for failing to take due care to organize and control the affairs of the Company in such a manner that the implementation of AML/CFT framework to check money laundering and terror financing activities is effective and violation of the said framework is avoided. Money laundering and terror financing related concerns, internationally, have put the country and its economy at a great risk. I, hereby, further direct the Respondents to review their AML/CFT policy and procedure to ensure that these are in line with mandatory legal framework.

9. The microfinance sector is making a worthwhile contribution to the uplift of the lower segment of the society. However, it is an unfortunate reality that the terror operators have penetrated to the grass root levels of the society and it is of no surprise that microfinance sector is rated medium high in terms of money laundering and terror financing risk. The Respondents have showed slackness in putting in place the policies, procedures and systems to ensure the compliance of the mandatory AML/CFT framework. As a Regulator SECP is committed to facilitate its regulatees. However, keeping in view the AML/CFT risks to the national economy, zero tolerance and strict punitive actions are in order. It is expected that the Respondents enhance their role to attain the expected level of vigilance for ensuring meticulous compliance of the aforesaid regulatory regime. I appreciate the rectification measures adopted by the Respondents and expect them to be vigilant and to ensure future compliance of the AML/CFT regime in letter and spirit.

10. The Respondents are directed to deposit the aforesaid penalty in the account of the Commission being maintained in the designated branches of MCB Bank Limited within 30 days of the date of this Order and to furnish Original Deposit Challan to this office.

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



Ali Azeem Ikram
Executive Director, IOD (Adjudication-I)

Announced on March 30, 2020, Islamabad