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**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**

**Adjudication Department- I**  
**Adjudication Division**

*Before*

**Mujtaba Ahmad Lodhi-Commissioner -Specialized Company Division**

*In the matter of*

**Qisstpay BNPL (Private) Limited**

Show Cause Notice No. &  
Issue Date:

No. SECP/SCD/ADI-I/Qisstpay/58/2022-115  
February 28, 2024

Date of Hearing:

July 10, 2024

Present at the Hearing:

Mr. Jordan Scott Olivas  
Syed Saad Ahmed

**ORDER**

**UNDER SECTION 282 J (1) & (2) OF THE COMPANIES ORDINANCE, 1984 ("THE ORDINANCE") FOR CONTRAVENTION OF CIRCULAR 3, 2023 READ WITH SECTION 282B(3), SECTION 282I(2) OF THE ORDINANCE; RULES 7(1)(a)(V), 7(1)(ca), 7(1)(da) READ WITH SCHEDULE I, 7(2) (k) AND 9 OF THE NON-BANKING FINANCE COMPANIES (ESTABLISHMENT AND REGULATIONS) RULES 2003; REGULATION 4 OF THE NON-BANKING FINANCE COMPANIES AND NOTIFIED ENTITIES REGULATIONS, 2008; CLAUSE 3 (III)(B) AND 3(IX) OF CIRCULAR 24 OF 2018 AND CLAUSES 2(3), 2(5), 5(4) AND 6(5) OF CIRCULAR 15 OF 2022**

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the Commission) against Qisstpay BNPL (Private) Limited (the Company and/or the Respondent No. 1), Mr. Jordan Scott Olivas (Respondent No. 2) and Syed Saad Ahmed (Respondent No. 3) being the Directors of the Company/ Respondent No. 1, hereinafter collectively referred to as the Respondents, under Section 282 J (1) & (2) of the Companies Ordinance, 1984 (the Ordinance) for contravention of Circular 3 of 2023 dated March 10, 2023 (Circular 3 of 2023) read with section 282B(3), section 282I(2) of the Ordinance; rules 7(1)(a)(v), 7(1)(ca), 7(1)(da) read with schedule I, 7(2) (k) and 9 of the Non-Banking Finance Companies (Establishment and Regulations) Rules 2003 (the NBFC Rules); Regulation 4 of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the NBFC Regulations); clause 3 (iii)(b) and 3(ix) of Circular 24 of 2018 dated December 27, 2018 (Circular 24 of 2018) and Clauses 2(3), 2(5), 5(4) and 6(5) of Circular 15 of 2022 dated December 27, 2022 (Circular 15 of 2022), vide Show-Cause Notice No. SECP/SCD/ADI-I/Qisstpay/58/2022-115 dated February 28, 2024 (the SCN).

2. The Company was incorporated on November 16, 2021 under the Companies Act, 2017 (the Act) and licensed by the Commission to undertake Investment Finance Services as an NBFC under NBFC Rules and the NBFC Regulations. The principal line of business of the Company is to undertake the business of Investment Finance Services and to provide all Investment Finance Services that include Discounting Services (Buy Now Pay Later, Invoice Factoring)/Micro Financing/Housing



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Finance Service/Leasing and to provide all other allowed activities under 'Investment Finance Services' as a licensed Investment Finance Company.

3. Brief facts leading to this case are that an onsite inspection (**the Inspection**) of the Company and its business was initiated under power conferred upon the Commission under section 282I of the Ordinance and section 6A(2)(f) of Anti Money Laundering Act, 2010 (**the AML Act**) vide inspection order No. OD(NBFCYSD/QPL/2023/152 dated March 13, 2020, with a scope to check the status of compliance with the applicable regulatory framework, along with review of operational activities, governance, internal control environment, AML/CFT compliance. Letter of finding ("LOF") dated June 20, 2023 was shared with the management of the Company and comments received from the management vide email dated July 06, 2023, were incorporated at the relevant sections of the Inspection Report dated January 23, 2024. The said Inspection Report revealed that the Respondents failed to comply with the requirements of Circular 3 of 2023, rule 7 & 9 of the NBFC Rules, regulation 4 of the NBFC Regulations and provisions of Circular 24 of 2018 & Circular 15 of 2022. In view thereof, the SCN was issued to the Respondents.

4. In response to the SCN, the Respondent No. 1 vide letter dated March 15, 2024 submitted its reply which, *inter-alia*, is reproduced as under:

*"The Company has been working in Pakistan since a couple of years but unfortunately regardless of being a pioneer of the BNPL market in Pakistan, the company has suffered huge losses due to the recent regulations introduced by the Commission. The Company always tries to be compliant with the regulations but sudden multiple changes in the regulations issued by the Commission in the past year has changed the dimensions of the business to extreme volatility and huge Inflation, The Company has been suffering losses post 27th March, 2023 as there is no App currently used by Qisstpay for carrying out its business and the source of revenue of the company has been severely affected by introducing frequent new laws while unregistered apps have continued their illegal business poaching our clients and because of which investors deters from investing in Pakistan in NBFC sector. Response on the following non-compliance with the requirements of the Ordinance:*

**A. Non-compliance with circular 3 read with section 282B (3) of the ordinance;**

- i. No payment against provision of services to LPTL
- ii. LPTL's funding to finance the Company's Lending business
- iii. Cessation of service agreement after suspension of the Company's lending business
- iv. Repatriation of LPTL's funding on cessation of the Company's lending business
- v. Lending App-Credit Cat now being used by another company with different name
- vi. Appointment of LPTL's representative as Authorized signatory of the Company's bank account.

*In the context of above-mentioned reservations made by the Honorable Commission, following is the response on behalf of the respondents:*

*As stated by the Company during the Inspection phase, LPTL is technology partner of the Company and further for the same reason an agreement was signed between the parties which was later produced in front of the Inspection team to define the relation between the parties. The Company further produced the relevant receipts of 2 transactions of amounting Rs. 565,600 each as the compliance fee and the same transactions were supported by the agreement between the parties. The above produced receipts are enough evidence to prove that the above quoted amount is being treated as compliance fee paid by the LPTL to the Company. Furthermore, the amount received by the Company from LPTL of Rs 14 Million*

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was dealt as the security/guarantee for contract and the rest of the amounts were the business transaction under the same ambit of the above quoted agreement.

Furthermore, the technology relation between the Company and LPTL was specifically to the extent of the micro lending business, as soon as the Company decided to end their micro lending business due to the restrictions imposed by the Commission the same agreement was terminated in order to comply with the circulars and regulations.

It is further submitted, that as quoted above by the Company that LPTL was our technology provider, the same technology provision was terminated and LPTL was free to collaborate with any other service as they were not barred by any provision of law or by the Company. The Commission further questioned the appointment of the signatory in which the Company response was that the signatory was the mediator consultant and Company was not liable to pay any amount to the mediator as this was the responsibility taken by the LPTL.

Hence the allegations made under this SCN regarding sub-letting of the license are denied as acquiring customer acquisition and technology services are legal under the provisions of law. The Company further requests the Commission to summon the LPTL for further clarification on the services provided by them to the Company.

### **B. Non-compliance with Section 282I (2) of the ordinance:**

- Non- provision of details of lending
- Non-provision of information requirements pertaining to AML and complaints:

Qisstpay BNPL Private Limited as being one of the pioneers of the BNPL market of Pakistan has played a significant role in developing the NBFC market in Pakistan by attracting millions of dollars of foreign investments. The Company during all the stages regardless of being a startup and the hurdles faced during the past always tried to comply with all of the regulations from time to time introduced by the Commission. The Company during the time of in-house inspection went through a thorough procedure of inspection including the examination of application used by the Company, complaints handling procedure, dealing mechanism of complaint, etc. Hence the allegation of no complaint handling procedure is denied.

The detailed submission of multiple data of lending and BNPL took place during the last year and the Company has submitted all of the lending data details to the inspection team. The Company denies the allegation of not providing any data to the inspection team but does accept the fact the Company did not record all of the required data by the Commission at this time as there were no clear instructions at that time because the NBFC industry was in the developing phase.

Furthermore, the Company for the purpose of supporting our stance submitted the details of the bank accounts in order to clarify the stance of markup fee, other fee, repayment date, amount charges, etc.

Qisstpay BNPL Private Limited clearly submitted in multiple submissions that the Raazcash app was just used in the pilot mode to test the app with a cap limit on it on both amounts and the order and after the restriction of one app rule, Company abandoned the app and no further loans were disbursed.

### **C. Non-compliances with the requirements of the NBFC Rules:**

- Deposit taking from unrelated/non-associated persons
- Non-compliance with the Appointment of internal Auditor
- No fidelity Insurance coverage for employees
- Absence of credit committee
- Non-Filing of financial statements for the year ended June 30, 2023

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In reference to the deposit taking from the unrelated person, the Company humbly submits that Qisstpay BNPL Private Limited has always opted the legal path to get the inward remittance into the country and the Form-R of each transaction was presented to the Commission. The amount submitted by Mr. Jawad Kirmani was dealt with as the loan from the director and to support our argument we will be submitting the certificate of the auditor.

Several appointments of officers and formation of committees took place during the last year as the Company was in the development phase, the Internal Auditor was previously appointed but as the Form-29 was not approved by the CRO of the Company due to some unknown reason after which the complaint against the CRO was also sent to the commission and only after that he further approved the forms after a delay of a couple of months. The Company due to the delay in acceptance of form had another meeting in which the appointment of Internal Auditor was revised as the time period for reporting of BOD had elapsed at first stage.

Furthermore, the Company along with the external auditor had several SCNs from the Commission in the last year which caused the delay in finalizing the financial audited accounts for the year ended 30 June, 2023, we further assure that the audit is in the final phase and the Company will be able to file for the direction of AGM within this month of March 2024.

Adding more, the Company is in the process of downsizing and has ended the facility of providing micro lending services to its customers due to extreme inflation and instability in the field of NBFCs. The Company shall be getting the fidelity insurance against its employees as soon as the Company will be done with the downsizing of the employees before resuming its business in a manner that can be done in Pakistan.

### **D. Non-compliance with the requirements of the NBFC Regulations:**

- Non-compliance with the minimum equity requirement
- Absence of grievance redressal's details on website
- Absence of complaint escalation procedure
- Access to user's private Information
- Absence of key fact statement in Lending/BNPL App
- Non-submission of CSAF Audit report
- Absence of Contact Number at the Company's website

In the light of above-mentioned queries regarding the non-compliance it is submitted that the allegation regarding the minimum equity requirements baseless as the company was fulfilling the requirements during the time mentioned in the subject matter SCN and still is at the present time fully compliant with the minimum equity requirement, the inspection team did not calculate the equity in accordance with the proportions given in the rules and regulations. Furthermore, the equity at that time was also justified by the financial audited accounts of the Company as well.

Adding more, several committees were formed to address the issues regarding the complaint escalation procedure, CDD, Risk assessment, etc. and the same were reported to the Commission, the responsibilities of these committees are to formulate such procedures which can further assist the customers of the Company in resolving their problems and queries and later to decide as to which escalation procedure and grievance dealing mechanism they would be referred to. These changes were introduced but unfortunately due to restrictions of SECP the Company abandoned the lending business in order to comply with the rules and all of the mechanisms devised at that time are currently being used for the BNPL business.

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*As stated, the details of the contact number are also being displayed on the website of the Company under the "Pakistan Chapter" as the Company is multinational so different chapters are available on the website which might have caused this misunderstanding between the inspection team and the Company's compliance. Company further in accordance with the laws got CSAF report complied with but then the SECP again changed the criteria of the CSAF which is the reason because of which Company was not able to submit the CSAF report. It is presently the case in the entire NBFC industry that the compliance with CSAF has not been done because of sudden changes by SECP. Company has, however, engaged the CSAF in accordance with the new criteria and the audit is currently taking place. Regardless, in this case the company does not have an app functioning so there is no non-compliance.*

*In light of the above stated facts and clarification it is humbly requested to not impose any kind of penalty on the Company. We assure that our first priority is to get fully compliant with the rules and regulations which are introduced from time to time by the Commission. It is further submitted that the Company has further decided to not engage into any such kind of business i.e. microlending without getting fully complied with the latest introduced rules and has not had an app providing any such service since SECP imposed restrictions."*

5. Subsequently, Respondent No. 1 vide letter dated April 26, 2024 intimated the Commission regarding the decision relating to closure of business and surrender of NBFC license by the Company and also informed that the winding up process of the Company will be initiated at the earliest.

6. In order to provide an opportunity of personal representation, hearing in the matter was fixed for July 10, 2024 wherein Mr. Mr. Jordan Scott Olivas and Syed Saad Ahmed appeared and inter-alia stated that:

### Mr. Jordan Olivas

- Sub-letting is a broad term and not defined through any circular of SECP. However have never sub-letted the license and/ or app to any third party. LPTL is the technology partner and there is no restriction to appoint technology partner in any law related to NBFCs;
- All the available details/ information were provided to the Inspection team;
- Over USD 5 million have been invested by the CEO and the same cannot be pulled back due to restrictions. Further, license of the Company has been surrendered two month ago;
- All the servers of the Company are ISO Certified & PSC compliant;
- Customer data was used or underwriting and after issuance of Circular, the Company has stopped accessing messages of customers. However never obtained any personal/ private data of the Customers without their consent and never installed any spyware;
- Qisstay observes and pays due importance to its secrecy policy;
- Laws are absurd, not right and not friendly; Regular regulatory changes and particularly after investment by a company are not right;
- The Company has surrendered its license to undertake business as an NBFC vide letter dated April 26, 2024.

### Syed Saad Ahmed

- I head technical department and all decisions are made by Jordan;
- Reiterated the submissions made by Jordan;
- Am also signatory to the bank account and payment of Rs. 287 million (approx.) was made to technology partner.

7. The relevant provisions of the law are reproduced as under:

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### Section 282B (3) of the Ordinance:

*"The Commission may issue such directives, circulars, codes, notifications, and guidelines as are necessary to carry out the purposes of Part VIIIA and the rules and Regulations made thereunder".*

### Section 282I (2) of the Ordinance:

*"Where an enquiry or inspection under sub-section (1) has been ordered, every director manager or other officer of the NBFC to which or to whose director, manager or other officer the enquiry or inspection relates and every other person who has had any dealing with such NBFC, its director, partner, manager or officer shall furnish such information in his custody or power or within his knowledge relating to, or having bearing on the subject-matter of the enquiry or inspection as the person conducting the enquiry or inspection may by notice in writing require.*

### Rule 7(1)(a)(v) of the NBFC Rules:

*"(1) A NBFC shall:*

- (a) maintain such books of accounts and other records, as prescribed under the Ordinance, as shall depict a true and fair view of its state of affairs, including:-*
  - (v) record of the meetings of the board of directors and all relevant committees including the audit committee, credit committee and investment committee;*

### Rule 7(1) (ca) of the NBFC Rules:

*"An NBFC shall appoint [as internal auditor]."*

### Rule 7(1) (da) of the NBFC Rules;

*"An NBFC shall furnish to the Commission its quarterly and annual financial statements in accordance with Schedule I"*

### Rule 7(2)(k) of the NBFC Rules:

*"(2)A NBFC shall not:*

- (k) raise deposits in any form by whatever name called except as specified by the Commission in the Non-Banking Finance Companies and Notified Entities Regulations, 2008"*

### Rule 9 of the NBFC Rules:

*"An NBFC shall obtain sufficient insurance coverage from an insurance company rated minimum A- by a credit rating agency registered with the Commission against any losses that may be incurred as result of employee's fraud or gross negligence. The NBFC shall make disclosure about the insurance coverage in its financial statements."*

### Regulation 4 of the NBFC Regulations:

*"An NBFC licensed by the Commission to undertake any form of business mentioned in Regulation 3 shall, at all the times, meet the minimum equity requirement or any other requirement in lieu of 'minimum equity requirement in respect of each form of business as provided in Schedule I"*

### Circular 3 of 2023:

*"..... directs all NBFCs to abstain from engaging in any kind of app integration, app sub-letting, License sub-letting, payment services, credit scoring & worthiness check, and/or any other type of integration services or collaboration with any digital lending app that is not approved by the SECP in terms of Circular 15 of 2022 dated December 27, 2022..."*

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### Clause 2(3) of Circular 15 of 2022:

"Before proceeding for loan disbursement, a Digital Lender shall display a summary of key fact statement to the borrower through a video/audio, screen shot and email/SMS in English and Urdu languages. The key fact statement shall be presented in a simple, clear and easily accessible format and shall include the minimum information as provided in Annexure – A;"

### Clause 2(5) of Circular 15 of 2022:

Digital Lender shall also provide comprehensive disclosures to the borrowers on collection of data, its safe storage, sharing and its usage and in this regard shall also obtain express consent of the borrower, Furthermore, a digital lender shall not acquire any information that is personal in nature and is not directly related to the credit score calculations including information stored on the device such as videos, photos, SMS or other digital content etc."

### Clause 5(4) of Circular 15 of 2022:

"All calls and messages for loan collection should be made via company's designated phone numbers (to be made public through website & App) and all calls should be recorded. The call recordings and log of messages should be maintained for a period of at least one year;"

### Clause 6(5) of Circular 15 of 2022:

"For the one existing App that will continue operations, the Digital Lender shall submit the requisite certificate from PTA approved CSAF and ensure that all other Apps shall cease to exist;"

### Clause 3(iii)(b) of Circular 24 of 2018:

"NBMFCS must have information about their complaint handling mechanism clearly available to the public (notably, in product statements, loan application, loan approval letter, by putting standees in the branches, on their websites, etc.). The information must include how to lodge a complaint along with contact details (address, phone & fax numbers and email address) and that is free-of-charge."

### Clause 3(ix) of Circular 24 of 2018:

"It is important that complaint should be resolved as early as possible and complacency in dealing with complaints should not be tolerated. For the purpose, the NBMFCs should establish an escalation procedure whereby a complaint not resolved or disposed of within particular timeframe should be escalated to next hierarchy."

**282 J: Penalty for failure, refusal to comply with, or contravention of any provision of this Part.-** "(1) Notwithstanding anything contained in any other provision of this Ordinance, if a NBFC or the notified entity or its officers (including auditors) fails or refuses to comply with, or contravenes any provision contained in this Part or of any of the provisions of the rules or regulations made under section 282 B or regulation, circular or directive or any direction or order passed by the Commission under the provisions contained in this Part or knowingly and willfully authorizes or permits such failure, refusal or contravention, shall, in addition to any other liability under this Ordinance, be also punishable with fine the amount of which shall not exceed fifty million rupees:

Provided that if the failure, refusal, default, contravention is committed by NBFC or the notified entity, every director, manager, or other officer or person responsible for the conduct of its affairs shall, unless he proves that the failure or contravention or default took place or committed without his knowledge, or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence.

(2) Without prejudice to the provisions of sub-section (1), in case of contravention of any provision of this Ordinance or rules or regulations made or non-compliance of any direction given or order passed

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*thereunder by the Commission, the Commission may cancel or suspend any one or more of the licenses in respect of various forms of business of the NBFC or registration granted to any notified entity, after issuing a show cause notice and giving such NBFC or notified entity as the case may be, an opportunity of being heard or pass any other order which may be deemed appropriate by the Commission."*

8. I have examined the facts of the case in light of the applicable provisions of the law and considered the written as well as verbal submissions and arguments of the Respondents and its Authorised Representatives and their decision to surrender the license granted to the Company to undertake Investment Finance Services and to initiate winding up proceedings. At this juncture, it is imperative to discuss the following observations:

### A. Non-Compliances with the requirements of the Ordinance:

#### i. Non-Compliance with Circular 3 read with read with Section 282B (3) of the Ordinance:

Circular 3 of 2023 dated March 10, 2023 directs all NBFCs to abstain from engaging in any kind of app integration, app sub-letting, License sub-letting, payment services, credit scoring & worthiness check, and/or any other type of integration services or collaboration with any digital lending App that is not approved by the SECP.

The intent of the legislator by prohibiting sub-letting of lending app was to maintain operational integrity, regulatory compliance and to enable NBFCs to ensures that sensitive financial data and customer information are safeguarded against potential breaches or misuse by unauthorized parties. Further it was intended to ensure that all transactions and customer interactions comply with applicable financial regulations and anti-money laundering requirements, thus preventing potential financial crimes and enhancing customer trust.

Review of bank accounts of the Company transpired the receipt of amount from Lighting Pioneer Technology (SMC-Pvt) Limited ("LPTL") as per following details:

Bank	Date	Bank Number	Account	Amount in PKR
UBL	07-Mar-23	000280109208		562,600
UBL	25-Mar-23	000280109208		562,600

The Respondent's stance that LPTL is technology partner of the Company and the aforesaid two receipts of Rs. 562,500 each were received as compliance fee in terms of their agreement with LPTL for Customer Acquisition and Credit Screening, could not be substantiated from the evidences submitted by the Respondents. In this regards it is pertinent to highlight following additional factors:

- The Company claimed that it received compliance payments from LPTL, however no payment for procurement of Services from LPTL was made by the Company for which no justification was provided by the Respondents;

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- b) During October 2022, the Company received an amount of Rs. 14 million from LPTL in its bank account which was claimed to be on account of security deposit however it was noted that the same, if classified as security deposit, was not kept in a special account by the Company in terms of provisions of section 217 of the Act. Moreover it was also noted that a total sum of Rs. 201 million was received by the Company from LPTL for which the Company could not provide any justification hence it reflects that the lending business of the Company was funded through funds received from LPTL;
- c) The Company, vide its email dated November 22, 2023, informed that the service agreement with LPTL ended on 27 March 2023 to comply with the restriction imposed by the Commission through Circular 15 of 2022 which provides that an NBFC could have only one lending app. The Company accordingly decided to continue business with their BNPL App and, therefore, seized the lending through their Credit Cat app and also halted operations of customer acquisition (tech) via their partner LPTL. However during the inspection, a domain name registered with the same name i.e. [www.ereditcatpak.com](http://www.ereditcatpak.com) was found, and on the said website, another lending App "Smart Qarza" was found, which was being operated by Goldlion Financial Services (Pvt) Limited ("GLFSL"), a subsidiary of LPTL. Further the Bank statement of the Company reflected that the Company paid Rs. 287 million to LPTL and GFSL for which the Respondents neither provided any purpose nor were able to submit any supporting documents.
- d) It was noted that Mr. Tian Hong Yang, CEO of LPTL was one of the authorized signatories of the Company's bank account and later he was replaced by Mr. Yu Shewngwei, another Chinese National. The Respondents stated that the signatory was the mediator consultant for aforesaid service agreement of the Company with LPTL, with zero cost to the Company however no justification for making the CEO of the technology partner firm, a signatory of the bank account of the Company was provided.

In view thereof, it is evident from the following facts that the Company subletted its License to LPTL under the cover of service agreement in contravention with the requirements prescribed through Circular 3 of 2023:

- LPTL offered loan through the Company for which funding was provided by LPTL to the Company;
- despite cession of lending business, the registered domain of the Company for lending business was unauthorizedly being used by a lending app of a company owned by LPTL;
- the Company, after the cession of its lending business, repaid the amount received from LPTL for funding its lending business.

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ii. **Non-provision of Information to the Inspection Team (Section 282I (2) of the Ordinance)**

Section 282I (2) of the Ordinance requires the NBFC to furnish such information as required by inspection team. However, during the inspection, the following, non-compliances were observed:

- The Respondents, despite various commitments, failed to provide complete details of lending data of the Company. The lending data provided by the Company related to the period from December 2022 till March 2023 as against the, requirement for the period from June 2022 till February 2023.
- Lending data of "Raz Cash" not provided;
- The Respondents shared customers data of their BNPL business but the same was not according to required format as no risk category is assigned to the clients.
- The Company could not provide explanation of nature and status of Complaints received by the Company during the review period as required in IRM dated March 14, 2023;
- Complete Customer Database of the Company's all clients screened against all SROs related to UNSCRs and NACTA lists as on February 28, 2023 as required in IRM dated march 14, 2023 was not provided.
- The Company failed to provide complete screenshots/video of loan application process of apps which have been used for lending and BNPL services vide email dated June 14, 2023.

The Respondents denied that they did not provide any data to the inspection team however admitted that they did not record all of the required data as there was no clear instruction at that time. The said stance of the respondents is not tenable as it is the responsibility of the Company to ensure that all necessary data is accurately recorded and maintained and in terms of rule 7(1)(a) of the NBFC Rules, the Company is required to maintain books of accounts and other records for a period of ten years. It is noted that any lapse in data recording undermines the integrity of the inspection process and raises concerns about the Company's commitment to maintaining transparent and accountable practices.

In view thereof, it is evident that the requisite information was not provided to the Inspection Team and the Respondents while admitting the same have not submitted any specific reason for not providing the said information, thus contravention of section 282I (2) of the Ordinance is established.

**B. Non-Compliances with the requirements of the NBFC Rules:**

**(i) Deposit Taking from Unrelated/Non-Associated Persons**

Rule 7(2)(k) requires that an NBFC shall not raise deposits in any form by whatever name called except as specified by the Commission. It was observed that an individual named Jawad Kermani, not an associate of the Company, transferred Rs.7.5 million in the Company's UBL Bank Account No. 1255-000280109208 on June 06, 2023.

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The Respondents stated that this is the money received by Mr. Jawad Kirmani on behalf of the Respondent No. 2 and was treated as loan from the Director. The Respondents also submitted following supporting documents to substantiate their claim:

- SAFE agreement dated May 17, 2023 had been executed for prescribing means for sale, offer, transfer, pledged or hypothecation of securities between the transferor of funds, Mr. Jawad Kermani and Qisstpay Inc. owned by Respondent No. 2;
- the proceeds for sale of securities under the said agreement were transferred by Mr. Jawad in the bank account of the Company on directions of Respondent No. 2;
- Email dated February 06, 2024 by Mr. Jawad Kermani to the auditors of the Company confirming that Rs. 7.5 million were transferred by him to the Company on instructions by the Respondent No. 2; and
- The certificate dated February 06, 2024 by the Auditor M/s Parker Russell-A.J.S., Chartered Accountants confirming that the proceeds of Rs. 7.5 million were received by the Company on behalf of Respondent No. 2.

In view of the aforesaid, it is noted that:

- (i) The SAFE agreement dated May 17, 2023 between Mr. Jawad Kermani and Qisstpay Inc. owned by Respondent No. 2 was executed for prescribing means for sale, offer, transfer, pledged or hypothecation of securities however said agreement does not substantiate the stance of Respondents that the funds transferred are proceeds of sale of shares by Respondent No. 2 to Mr. Jawad Kermani;
- (ii) The said agreement is general and neither provides for sale of shares of any specific company nor any evidence to actual sale transaction executed between Respondent No. 2 and Mr. Kermani depicting the number and price of shares sold, name of the company whose shares were sold and the total consideration thereof has been submitted by the Respondents;
- (iii) The transfer of funds by Mr. Jawad in the bank account of the Company, certification of receipt of funds from Mr. Jawad by the auditor M/s Parker Russell-A.J.S., Chartered Accountants and a direct confirmation in this respect from Mr. Kermani stating that the funds were transferred on directions of Respondent No. 2 neither establishes the relationship of Mr. Jawad with the Company or Respondents nor provide any evidence as to the purpose and nature of the transaction.

In view thereof, circumstances did exit, as highlighted during the inspection, evidencing that the Respondents were involved in the act of illegal deposit taking.

### (ii) Non-Compliance with the Appointment of Internal Auditor

Rule 7(1) (ca) of the NBFC Rules requires an NBFC to appoint an individual, having a minimum of three years of experience, as its internal Auditor however as per the data of its employees provided by the Company, no employee was designated as an Internal

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auditor. Later the Company shared the appointment letter of Chief Internal Auditor states the appointment date of internal auditor from April 3, 2023 however contrary to the submission by Company, the date of appointment of Internal auditor as per Form-29, is June 6, 2023. Further the stance of the Respondents regarding delay in acceptance of Form-29 by the CRO is not tenable as the submitted forms are only accepted by the CRO once they are compliant with all the applicable requirements.

In view thereof, it is established that the Company failed to appoint its Internal Auditor till June 06, 2023, contrary to the requirement of rule 7(1) (ca) of the NBFC Rules.

### (iii) No Fidelity Insurance Coverage for Employees

Rule 9 of the NBFC Rules requires that an NBFC shall obtain sufficient insurance coverage from an insurance company rated minimum A- by a credit rating agency registered with the Commission against any losses that may be incurred as a result of employee's fraud or gross negligence. Moreover, the NBFC shall also make disclosure about the insurance coverage in its financial statements. It is an admitted position that the Company has not obtained the requisite insurance coverage stating that it will obtain the same once it is done with downsizing and before resumption of its business. Thus, contravention of rule 9 of the NBFC Rules is established.

### (iv) Absence of Credit Committee

Rule 7(1)(a)(v) requires that an NBFC shall maintain such books of accounts and other records, as prescribed under the Ordinance, as shall depict a true and fair view of its state of affairs, including record of the meetings of the board of directors and all relevant committees including the credit committee. It is observed that the Respondents failed to provide minutes of meetings of Management Committees stating that they are not maintaining any record for minutes of meeting. Further, the Terms of Reference (TOR) of Management Committees revealed that said TORs does not contain any term/ function relating to credit function of the Company which reflects non-existence of independent credit committee of the Company.

The Respondents neither submitted any written response to the aforesaid alleged non-compliance nor argued the same during hearing held on July 10, 2024. In view thereof, it is established that the Respondents have violated the provisions of rule 7(a)(v) of the NBFC Rules by not forming an independent credit committee in the Company.

### (v) Non-filing of financial statements for the year ended June 30, 2023

The Company has failed to file its statutory annual audited financial statements for the year ended June 30, 2023 with the Commission, contrary to the requirement of Rule 7(1)(da) read with Schedule I of the NBFC Rules requiring every NBFC to furnish with the Commission annual financial statements in accordance with the provisions of the Ordinance (Now: Companies Act, 2017). The Respondents stated that multiple SCNs from the Commission caused delay in finalizing the financial statements and informed that audit is in final phase and they will be able to file for direction of AGM in March 2024.

ML.





# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

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It is noted that pursuant to the provisions of the law, the Respondents were required to hold AGM within 120 days following the close of financial year i.e. on or before October 28, 2023 and submit the audited accounts to the registrar within 15 days thereafter, by November 15, 2023. However, the Respondents failed to hold AGM and submit its annual audited accounts within stipulated deadline. Moreover, despite the assurance vide reply dated March 15, 2024, the Respondents could not submit any evidence regarding filing an application before the Commission for direction to hold AGM.

It is crucial to note that law clearly specifies the timelines and procedure for filing of annual audited accounts, therefore, the Respondents should have initiated the process earlier to ensure that the audited accounts were prepared in time for the approval and filing.

### C. Non-Compliance with the requirements of the NBFC Regulations

Review of audited account of the Company for the year ended June 30, 2022 transpired the equity of the Company as negative Rs. 35.05 million as against the prescribed minimum equity requirement (MER) of Rs. 100 million as per Schedule 1 of NBFC Regulations, contrary to the provisions of regulation 4 of the NBFC Regulations.

The Respondents negated the allegation by stating that the Company is not only currently compliant with MER but was also compliant during the alleged period and the inspection team did not accurately computed its equity.

It is noted that the stance of the Respondents regarding wrong computation of equity is not based on facts as the negative equity of Rs. 35.05 million was ascertained from the audited accounts of the Company for the year ended June 30, 2022. However it is observed that the reported equity of the Company as per Specialized Companies Return System of the Commission (SCRS) as on May 31, 2024 is Rs. 102.3 million however the same could not be substantiated as the audited accounts of the Company for the year ended June 30, 2023 have so far not been submitted by the Company.

### D. Non-Compliances with the requirements of the Circulars

#### (i) Absence of Grievance Redressal's details on website

Review of the website of the Company (<https://www.gisstpay.com/>), transpired that the Company has not updated its website in accordance with the requirements of Clause 3(iii)(b) of Circular 24 of 2018 as the Company's website only includes contact information but does not provide information related to Grievance Redressal System (GRS) such as information related to lodging complaint along with contact details (address, phone & fax numbers and email address) of complaint officer and that it is free-of-charge.

It is noted that the Respondents neither submitted any written response to the aforesaid non-compliance nor argued the same during hearing held on July 10, 2024. In view thereof, it is established that the Respondents have violated the provisions of clause 3(iii)(b) of Circular 24 of 2018 by not updating the website of the Company.

ML.



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I Adjudication Division

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### (ii) Absence of Complaint Escalation Procedures

Review of the complaint handling policy and procedure and Complaint handling function of the Company revealed that the Company has no Complaint Escalation policy and procedure contrary to the requirement under clause 3(ix) of Circular 24 of 2018.

The Respondents argument that Complaint handling and escalation mechanism is currently used for BNPL business due to abandonment of lending business is not tenable. The aforesaid requirement of the Circular is explicit and does not provide any exception to the Company from devising Complaint Escalation Policy and procedure.

### (iii) Access to User's Private/Confidential Information

On review of privacy policy of the Company's loan application, it was noted that the Company collects personal/private information which is not related to credit score calculation, including:

- Messages (Emails and SMS or MMS)
- Personal info (Name, Email address, user IDs, Address, Phone number and Sexual orientation)
- Financial Info (user payment info and purchase history)
- App activity
- Photos and Videos

Further, Android Manifesto of the Company's lending app shows that the Company is involved in taking access to private information like External Storage, Contacts, and Calendar and can read received messages of its clients which is in contravention of clause 2(5) of Circular 15 of 2022.

The Respondents during the hearing stressed that they observes/pay due importance to the secrecy policy of the Company and have never obtained any personal/ private data of the customers without any installed any spyware however failed to provide any evidence to substantiate their statement and to counter the observation of the Inspection Team. Moreover, the Respondents admitted that customer data was used for underwriting and after issuance of Circular 15 of 2022, the Company has stopped accessing messages of customers. Thus the violation of clause 2(5) of Circular 15 of 2022 is established.

### (iv) Absence of Key Fact Statement in Lending/BNPL App

The Company was required, in terms of Clause 2(3) of Circular 15 of 2022, to display a summary of key fact statement to the borrower through a video/audio, screen shot and email/SMS in English and Urdu languages before proceeding for loan disbursement. The Respondents however failed to provide the said key fact statement to the Inspection team and stated that key fact statement has been incorporated into its updated version of app which is yet to be released to clients.

The aforesaid admission of the Respondents regarding non-availability of key facts statement for its customers in the app version being used establishes violation of Clause 2(3) of Circular 15 of 2022.

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# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

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**(v) Non-Submission of CSAF Audit Report**

The review of record available with the Commission revealed that the Company submitted CSAF certificate dated June 17, 2023 with a delay of 80 days as the due date for submission of the same, in terms of clause 6(5) of Circular 15 of 2022 was March 27, 2023.

The stance of the Respondents that change of criteria by the Commission caused its delay in submission of the required certificate is not tenable as ample time was accorded to the lending NBFCs for fulfillment of the requirement and no exception was provided under Circular 15 of 2022 from the explicit timeframe for submission of CSAF certificate. Thus the delay of 80 days in submitting certificate from CSAF establishes violation of Clause 6(5) of Circular 15 of 2022 by the Respondents.

**(vi) Absence of Contact Numbers at the Company's Website**

In terms of Clause 5(4) of Circular 15 of 2022, all calls and messages for loan collection should be made via company's designated phone number (to be made public through website & app) and all calls should be recorded.

It has been observed from the app and website of the Company that the designated contact number through which calls and messages for loan collection is made to the customer, is not mentioned on the website. Further the Respondents did not reply the enquiry by Inspection Team about such designated phone number(s).

The Respondents during the hearing stated that the said contact number is displayed on the website of the Company under Pakistan chapter however the same was not intimated to the inspection team despite enquiry made by them.

In view thereof, it is noted that the Company was required to comply with the requirement of displaying the contact numbers used for communicating with customers for loan collection at its app and website at all times and the non-availability of the same at the website at the time of inspection is a violation of clause 5(4) of Circular 15 of 2022.

9. In view of the above-stated facts, circumstances, and submissions made by the Respondents and their Authorized Representatives, it has been established that the Respondents have failed to comply with the Circular 3 of 2023 read with section 282B (3) of the Ordinance, section 282I (2) of the Ordinance, rules 7(1)(ca), 7(1)(a)(v), 7(1)(da) & 9 of the NBFC Rules, clause 3(iii)(b), 3(ix) of Circular 24 of 2018 and clauses 2(3), 2(5), 5(4) & 6(5) of Circular 15 of 2024 which attracts the imposition of penalty under section 282J of the Ordinance.

10. However considering the facts that: (i) the Company, vide letter dated April 26, 2024, has surrendered its license to undertake Investment Finance Services granted by the Commission and intimated to initiate the winding up process at the earliest; (ii) substantial foreign investment has been brought in the country by Respondent No. 2 which has helped in catalyzing economic growth, job creation, strengthening economic resilience and has positively impacted the Company's ability to pursue its business objectives; and (iii) the cooperation extended by the Respondents during the proceedings, I:



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

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- a) in exercise of the powers conferred under Section 282 J(1) of the Ordinance, hereby, impose an aggregate fine of **Rs. 3,000,000/- (Rupees, Three Million only)** on the Respondents in the following manner:


Respondents	Penalty (Rs.)
QisstPay BNPL (Private) Limited	2,000,000/-
Mr. Jordan Scot Olivas	500,000/-
Syed Saad Ahmad	500,000/-
<b>Total</b>	<b>3,000,000/-</b>

- b) in exercise of powers conferred under section 282J (2) of the Ordinance, hereby, order to cancel the license of the Company with immediate effect and the concerned Department of the Commission is advised to initiate the proceedings for winding up of the Company.

11. The Licensing and Registration Division of the Commission is hereby advised to ensure that any application for Fit and Proper criteria received in respect of Respondents No. 2 and 3 in future, be examined in light of this Order.

12. The Respondents are hereby directed to deposit the afore-mentioned fine in the designated Bank Account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited within thirty (30) days of the date of this Order and furnish receipted voucher evidencing payment of the same. In case of non-deposit of fine by Respondents, the Commission will initiate actions including but not limited to section 282J (5) of the Ordinance.

13. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and/or its CEO in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

  
Mujtaba Ahmad Lodhi  
Commissioner  
Specialized Companies Division

**Announced:**  
October 10, 2024  
Islamabad.

### Distribution:

1. Divisional Head - Supervision Division
2. Divisional Head - Licensing and Registration Division
3. Head of Department - Licensed Entities Department, Supervision Division