

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Mahboob Ahmad, Additional Director/Head of Wing
Licensed Entities-Adjudication Department-I

In the matter of

Qisstpay BNPL (Private) Limited

Show Cause Notice No. & Issue Date:	No. SECP/SCD/ADJ-I/58/2022-181 Dated February 28, 2024
Date of Hearing:	May 13, 2024; May 28, 2024
Present at the Hearing Representing the Respondent	Mr. Jordan Scott Olivas Syed Saad Ahmed

ORDER

UNDER REGULATION 31 OF THE AML/CFT REGULATIONS, 2020 READ WITH SECTION 6A(2)(H) OF THE ANTI-MONEY LAUNDERING ACT, 2010 AND RULE 4(1)(A) AND 6(1) OF THE AML/ CFT SANCTION RULES, 2020

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (**the Commission**) through the Show Cause Notice No. SECP/SCD/ADJ-I/58/2022-181 dated February 28, 2024 (**the SCN**) against **Qisstpay BNPL (Private) Limited (the Respondent and/or the Company)** for alleged contravention under regulation 31 of the of the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2020 (**the AML/CFT Regulations**) read with rules 4(1)(a) and 6(1) of the AML/CFT Sanction Rules, 2020 (**the AML Rules**) and section 6A(2)(h) of the Anti-Money Laundering Act, 2010 (**the AML Act**).

2. Brief facts leading to this case are that the Company was incorporated on November 16, 2021, as a private limited company under the Companies Act, 2017 (**the Act**), and licensed by the Commission on December 15, 2021, to undertake Investment Finance business as a Non-Banking Finance Company (**NBFC**) under the Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003 (**the NBFC Rules**) and Non-Banking Finance Companies and Notified Entities Regulations, 2008 (**the NBFC Regulations**). The principle line of business of the Respondent is to undertake the business of Investment Finance Services that include Discounting Services (Buy Now Pay Later, Invoice Factoring)/ Micro Financing/ Housing Finance Services/ Leasing and to provide all other allowed activities under 'Investment Finance Services' as a licensed Investment Finance Company.

3. It was transpired from the record available with the Commission that the review of the Company was carried out for the period **from December 15, 2021 to December 14, 2023 (the review period)** by the Inspection team (**the Team**) in respect of the relevant requirements



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of the Securities and Exchange Commission of Pakistan (Anti Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing) Regulations, 2020 (**the AML/CFT/CPF Regulations**) previously referred to as the AML/ CFT Regulations until notification of S.R.O. 1356(I)/2023 dated September 21, 2023. Scope of the review included evaluation of compliance with respect to the provisions stipulated under the AML/CFT Regulations. The findings/ observations of the Team were shared through Letter of Finding (**the LoF**) dated June 20, 2023 with the Company and comments received thereof vide email dated July 06, 2023 were incorporated in the Inspection Report (**the Report**) dated January 02, 2024.

4. The Inspection transpired that the Company/Respondent, *prima facie*, has been non-compliant with the AML/ CFT/ CPF Regulations and AML/CFT Regulations [*as and when applicable during the review period as per S.R.O. 1356(I)/2023 dated September 21, 2023*], detailed as under:

(i) **Absence of AML risk categorization process:**

Regulation 8(3) of the AML/CFT Regulations stipulates that the regulated person shall categorize each customer's risk depending upon the outcome of the Customer Due Diligence (CDD) process.

Review of file shared by the Respondent about its customer database vide email dated March 27, 2023 transpired that no risk category was assigned by the Respondent to its clients and risk category section was marked N/A.

In view of the above, the Respondent has not assigned AML risk categories to its customers, which, *prima-facie*, is a violation of regulation 8(3) of the AML/ CFT Regulations.

(ii) **Non-collection of income's proof:**

Regulation 9 read with Note (i)(o) and (iii) to Annex-1 of AML/CFT Regulations stipulates that regulated persons shall verify the identity of customer using reliable and independent documents, data and information. [*Note (iii) was applicable during the Review Period until April 27, 2022*].

During the Inspection, it was transpired that in ten (10) instances the Respondent has not been collecting any information related to source of income of its clients, as in the last lending module, the Respondent did not ask for the source of income from the customers during application process.

In view thereof, the Respondent has not provided any evidence related to source of income of its Clients, which, *prima-facie*, is in contravention of Note (i)(o) and Note (iii) [*as and when applicable during the review period*] to Annexure-I of the AM:/CFT Regulations (**the Annexure**) read with regulation 9 of AML/CFT Regulations.



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(iii) **Absence of AML's Ongoing Monitoring System:**

Regulation 19(1)(c) of the AML/ CFT Regulations stipulates that the regulated person shall conduct ongoing due diligence on the business relationship, including undertaking reviews of existing records and ensuring that documents, data or information collected for the CDD purposes is kept up-to-date and relevant, particularly for higher risk categories of customers.

During the inspection, the Team inquired about the Respondent's ongoing due diligence/ monitoring system, to which the Respondent responded that it verifies the customer at the time of On-boarding Solution, which includes Know Your Customer (KYC) and CDD Measures, Customer Risk Assessment, Sanctions, Politically Exposed Persons (PEP) and Law Enforcing Agencies (LEA) screening, Monitoring, Investigation and Reporting of Transactions.

However the Respondent has not provided any details of its internal CDD mechanism. Further, the provided agreement with Stifle is of date March 06, 2023 which depicts that, before, there was no ongoing monitoring system. Furthermore, the Respondent has also not provided any policy related to its onboarding procedure.

In view thereof, the Respondent, *prima-facie*, is in contravention with the requirements of regulation 19(c) of the AML/ CFT Regulations.

(iv) **Beneficial Owners are not identified:**

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

During the inspection, it was transpired that the Respondent verifies the individual through ID Document during loan application process. However, no information related to ID documents required by the Respondent in respect of BNPL customers. Furthermore there is no specific policy, process or mechanism for the identification of beneficial owner.

In view thereof, the Respondent has failed to identify the beneficial owner in transactions, which, *prima-facie*, is in contravention of regulation 16 of AML/ CFT Regulations.

5. The aforesaid violation attracts applicability of regulation 31 of the AML/CFT Regulations read with rules 4(1)(a) and 6(1) of the AML Rules and section 6A(2)(h) of the AML Act, which are reproduced as under:

"Regulation 31(1) of AML/CFT Regulations:

(1) *Any contravention of these regulations shall be cognizable by the Commission in accordance with section 6A of the AML Act and liable sanction provided in the AML/CFT*

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Rules, 2020 and imposed by the Commission according to clause (h) of sub-section (2) of section 6A of AML Act.

Rule 4(1)(a) of AML Rules:

- (1) On any contravention as set out in rules 3(2), any or all of the following sanctions may be imposed by the concerned AML/CFT Regulatory Authority, namely: -
(a) Impose a monetary penalty in accordance with these rules;

Rule 6(1)(a) of AML Rules:

- (1) The AML/CFT Regulatory Authority shall apply monetary penalties up to Rs. 100 Million per violation, in accordance with the risk-based penalty scale of the respective AML/CFT Regulatory Authority.

Section 6A(2)(h) of the AML Act:

(h) impose sanctions, including monetary and administrative penalties to the extent and in the manner as may be prescribed, upon their respective reporting entity, including its directors and senior management and officers, who violates any requirement in section 7(1), 7(3) to 7(6) and 7A to 7H and any rules or regulations made thereunder or those who fail to comply with the TFS regulations. Any person aggrieved by the imposition of sanctions under this clause may prefer an appeal in such manner and within such period to such authority as may be prescribed."

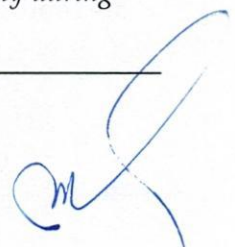
6. Keeping in view the aforesaid contraventions, the SCN was issued to the Respondent/Company, calling upon it to show cause in writing as to why penalty as provided under Section 6A(2)(h) of the AML Act, may not be imposed on it for the aforementioned contraventions of the law.

7. In response to the SCN, the Company vide letter dated March 15, 2024 submitted as under:

- a. Absence of AML risk categorization process
- b. Non-collection of income's proofs
- c. Absence of AML's ongoing monitoring system
- d. Beneficial owners are not identified

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

Qisstopay 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 investment from throughout the World. 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





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the time of in-house inspection went through a thorough and lengthy procedure of inspection and assisted the inspection team to the best of its knowledge.

The Company has always focused on complying with all rules and regulations especially concerning the money laundering and terror financing aspects.

In reference to the above-mentioned allegation made by the adjudication department Company would like to respond that there was always a risk categorization process which was opted by the Company and upon that categorization loans were disbursed and BNPL services were provided to the eligible customers. Company further has a CDD Team and different software integrated within its system including but not limited to "Stifel" which further assisted in doing CDD, KYC and customer risk assessment by following the standard procedure of carrying out the business.

The Company further assures that the details related to the beneficial owner and income's proof was captured to the extent to CDD but both of these details were not saved in order to respect the privacy of the customers. Furthermore, the Company has amended its business modules and currently the new module which will be produced in front of SECP for verification contains all of these necessary steps in compliance with the rules and regulations of the Commission.

In light of the above stated facts and clarification, it is humbly requested to not pass any adverse order against the Company or any of its directors and employees."

8. The hearings in the matter were fixed for May 13, 2024 which was adjourned. Later hearing in the matter was re-fixed for May 28, 2024 wherein Mr. Jordan Scott Olivas (Chief Executive and Director) and Syed Saad Ahmed (Director) appeared before the undersigned as the Authorized Representatives (**the Representatives**) on behalf of the Company. During the course of hearing, the Representatives were advised to explain the reasons for the alleged non-compliances, as narrated in the SCN. The Representatives reiterated the stance taken in the aforementioned written reply and assured compliance with the AML/CFT requirements in the future.

9. Subsequent to the hearing, the CEO of the Respondent vide letter dated June 14, 2024 made additional submissions regarding conflict in the AML/CFT Regulations, provided as under:

"Resolution Request Regarding AML/CFT Compliance Framework:

We are writing to address an essential concern regarding the current Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) compliance framework as outlined by the Securities and Exchange Commission of Pakistan (SECP). Upon a detailed review of both the core regulations and the accompanying annexures, we have identified certain inconsistencies that seem to create ambiguity in the regulatory expectations.

Overview of the Conflict:

The core of the AML/CFT Regulations, specifically Regulations 8(3), 9, and 19(1)(c) emphasizes a risk-based approach, allowing us, as a regulated entity, to tailor our anti-money laundering and counter-financing of terrorism measures based on the specific risk profiles of our customers. This approach is intended to be dynamic and adaptive, scaling in intensity relative to the assessed risks of our customers.

However, we observe that the annexures attached to these regulations provide a very detailed and prescriptive list of documents and verification steps that must be followed for all customers, irrespective of their risk assessment. This prescriptive nature can be seen as conflicting with the flexibility granted by the core regulations, which allow for variations in compliance measures based on varying risk levels.

Specific Points of Conflict:

1. Flexibility vs. Prescriptiveness: The core regulations advocate for due diligence measures that are proportional to the risk (e.g. ongoing due diligence based on risk assessments under Regulation 19(1)(c), whereas the annexures specify a fixed set of documents to be collected in all scenarios.

2. Risk-Based Approach vs. Uniform Requirements: Regulation 8(3) suggests that the Customer Due Diligence (CDD) process should be tailored based on the outcome of each customer's risk categorization, allowing for a nuanced approach to document collection. However, the annexures mandate uniform approach to document collection, which does not distinguish between different levels of risk.

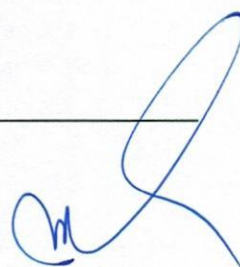
Legal Precedent and Interpretation:

While we are not able to cite specific Pakistani legal cases without access to a comprehensive legal database, it is generally upheld in many legal systems that when legislative texts are ambiguous or conflicting, the interpretation that aligns with the primary intent of the legislation is typically favored. This principle of statutory interpretation prioritizes the main objectives of the law over the rigid adherence to potentially conflicting ancillary texts.

Specific Points of Concern:

1. Flexibility vs. Prescription: The core regulations advocate for due diligence measures proportional to the risk, which suggests variability in compliance practices based on specific risk assessments. However, the annexures seem to mandate a uniform set of documentation for all customers, potentially limiting the practical application of a risk-based approach.

2. Implementation of SRO 920-2020: This directive further outlines the requirements for annual risk assessments and compliance frameworks, which are to be aligned with the national risk assessment. While it encourages the use of provided templates, there is an allowance for entities to develop their own methodologies, which could vary significantly in detail and scope from the annexures."





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10. In view of the aforesaid observations provided by the Respondent's CEO, I have observed that:

I. **Core Regulatory Intent vs. Annexure Requirements:**

While the AML/CFT Regulations advocate for a risk-based approach, allowing flexibility in implementing due diligence measures, the annexures detailing document and verification requirements serve a crucial purpose. They establish a baseline standard to ensure consistent and thorough due diligence practices across all customer relationships, regardless of perceived risk.

II. **Prescriptive Nature to Ensure Baseline Compliance:**

The detailed requirements in the annexures are intended to establish a minimum standard of due diligence necessary to combat money laundering and terrorist financing effectively. They provide clarity and uniformity in the types of documents and verification steps required, essential for regulatory oversight and consistency in compliance practices.

III. **Harmonizing Flexibility with Compliance Standards:**

While the Company argues for flexibility based on risk assessments under regulation 8(3) of the AML/CFT Regulations, it's important to recognize that compliance with the Annexure requirements does not preclude adapting due diligence measures according to risk. Rather, it ensures that fundamental documentation and verification standards are met universally.

Regulated entities can still apply a risk-based approach by supplementing these baseline requirements with enhanced due diligence for higher-risk customers, thereby aligning with the regulatory intent of adapting measures to risk profiles.

IV. **Regulatory Oversight and Risk Mitigation:**

The prescriptive nature of the annexures supports regulatory oversight by providing clear benchmarks against which compliance can be assessed. This clarity helps mitigate risks associated with inconsistent or inadequate due diligence practices, safeguarding against potential vulnerabilities in the financial system.

V. **Compliance and Operational Efficiency:**

By adhering to the Annexure requirements while applying risk-based principles, regulated entities can achieve a balance between compliance obligations and operational efficiency. This approach ensures that due diligence efforts are both robust and proportionate to the risks posed by customers, enhancing overall effectiveness in combating financial crime.

In view thereof, it is noted that while tensions may exist between flexibility and prescriptiveness, the Annexure requirements play a crucial role in establishing foundational standards for due diligence. Regulated entities should view these requirements as complementing to, rather than conflicting with, their ability to tailor compliance measures



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based on risk assessments. This approach supports regulatory objectives of maintaining a resilient AML/CFT framework while accommodating varying risk profiles within customer relationships.

11. With respect to the allegations provided in the SCN, the Respondent vide its letter dated June 14, 2024 made additional submissions, the relevant extract of which is provided as under:

"1. Alignment with SECP AML/CFT Regulations: Our AML/CFT practices are fully aligned with the SECP AML/CFT Regulations, 2020. Specifically, Regulation 4 allows for a risk-based approach in identifying, assessing, and understanding the ML/TF risks. Our dynamic risk assessment model, which categorizes risk based on ongoing transaction monitoring and customer interactions, is consistent with this approach and ensures that our risk categorization remains current and responsive to evolving risk profiles.

2. Transaction Monitoring and Risk Assessment: We employ a robust transaction monitoring system that analyzes customer behavior, transaction patterns, and other risk indicators in real-time. Our system utilizes advanced algorithms and machine learning to detect anomalies and potentially suspicious activities. Key risk indicators include transaction volume, frequency, geographic location, and customer profile data. Transactions exceeding predefined thresholds or falling outside expected patterns trigger alerts for further investigation. Moreover, we have implemented strong authentication measures including two-factor authentication (2FA) at each login and at the time of transactions, where applicable. This adds an extra layer of security and helps prevent unauthorized access. We regularly review and update our risk parameters, such as blocking transactions from high-risk regions or restricting the use of virtual cards, based on emerging threats and industry best practices.

3. Beneficial ownership Identification: In cases where the beneficial owner is the same as the account holder, we document this determination through a combination of customer declarations and independent verification. Our customer onboarding process includes collecting beneficial ownership information, which is then cross-referenced against reliable sources such as government, databases and public records. We maintain detailed records of these checks to demonstrate our compliance with beneficial ownership identification requirements.

4. Commitment to Addressing Deficiencies: We are fully committed to addressing any specific deficiencies Identified by the SECP and providing additional information as needed to demonstrate our compliance. We propose the following timeline for remediating any issues:

- *Conduct a comprehensive review of our AML/CFT program within the next 30 days to identify areas for enhancement.*
- *Develop and implement necessary updates to our policies, procedures, and systems within 60 days of completing the review.*



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- Provide a detailed report to the SECP outlining the steps taken and the results achieved within 90 days of implementing the updates.

5. Legal Precedents and Regulatory Guidance: Our interpretation and application of the risk-based approach are supported by international standards and regulatory guidance. The Financial Action Task Force (FATF) Recommendations, which form the basis for many AML/CFT frameworks worldwide, emphasize the importance of a risk-based approach in designing and implementing AML/CFT measures (FATF Recommendation 1). The SECP AML/CFT Regulations, 2020, align with these global standards, allowing regulated entities to adopt a risk-based approach commensurate with the nature and size of their business (Regulation 5).

6. Commitment to Compliance and Cooperation: We have always maintained open lines of communication with the SECP and have had the privilege of meeting with the Chairman in the past. Our commitment to AML/CFT compliance goes beyond mere adherence to regulations. We proactively seek out innovative ways to strengthen our controls, such as leveraging social media data to enhance our KYC processes and reduce AML risks. We remain dedicated to working closely with the SECP to address any concerns and ensure the integrity of our financial system.

In conclusion, we reiterate our unwavering commitment to maintaining a robust AML/CFT compliance framework that meets the highest standards set by the SECP. We look forward to further engagement with your team to address any outstanding issues and demonstrate our compliance in action. Below, you will find individual responses, with details, for each point made in the original SCN; if you have any questions please let us know.

INTERNAL AUDIT - COMPLIANCE VERIFICATION AND RELEVANT OBSERVATIONS

In conducting a thorough internal audit aimed at verifying compliance with the relevant regulations we have not only affirmed our adherence to all statutory requirements but also uncovered noteworthy insights. During the audit period, we observed that multiple employees from the Securities and Exchange Commission of Pakistan (SECP), including several Deputy Directors and members of the risk and compliance team, were active users of QisstPay BNPL Private Limited's services. These individuals not only created accounts but engaged in multiple transactions.

Key Observations:

- **Engagement of Regulatory Staff:** The active participation of SECP employees in using our services, particularly those who are well-versed in regulatory and compliance framework indirectly supports our adherence to regulatory standards. These users, given their professional background and knowledge, would inherently understand the implications of non-compliance and thus their repeated use of our services suggests a recognition of compliance practices.
- **Data Privacy and System Integrity:** It is important to note that these SECP employees did not have access to any sensitive operational systems or backend data. Their

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interactions with our services were strictly as end-users, which provides them with a user's view of the compliance measures we have publicly implemented, including the visibility of necessary documentation and adherence to prescribed processes.

- **Objective of Disclosure:** *We disclose this information not to single out individuals or suggest any impropriety on their part, but highlight a real-world validation of our compliance from informed members of the very body that governs our industry. This unique data point serves as an additional layer of assurance regarding our operational integrity and compliance with legal standards.*

Conclusion

This audit not only reaffirms our commitment to uphold the highest standards of regulatory compliance but also showcases implicit recognition of such compliance by knowledgeable industry insiders. As we proceed with winding down operations, we maintain our position that our business practices have been conducted in full accordance with the law, evidenced both through formal compliance checks and the practical endorsement of our platform by regulatory officials.

We trust this audit contributes positively to resolving any outstanding concerns and underscores our dedication to transparency and adherence to regulatory expectations.

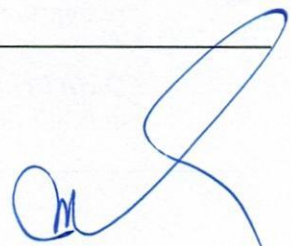
Response to point (i) – Absence of AML Risk Categorization Process:

In response to the concerns regarding the absence of an AML risk categorization process as outlined in your Inspection report, it is important to clarify that our firm has implemented a robust customer due diligence (CDD) process aligned with Regulation 8(3) of the AML/CFT Regulations. This process involves a preliminary risk assessment during customer onboarding. While it was noted that no explicit risk category was assigned in the records reviewed, our firm utilizes a dynamic risk assessment model that categorizes risk based on ongoing transaction monitoring and customer interactions, rather than static categorization at onboarding. This method ensures continuous compliance and is reflective of a more holistic approach to risk management.

Moreover, the absence of a categorization label in the reviewed files does not equate to noncompliance but indicates our reliance on an integrated risk assessment system that adapts to evolving risk profiles.

Response to Point (ii) – Non-collection of Income's Proof:

Regarding the issue of non-collection of income proof as stipulated in Regulation 9 read with Note (i)(0) and Annex-I, our procedures are designed to comply with the regulations by requiring income verification only when it directly influences the risk profile of a customer. During the instances cited, where income information was not collected, our assessment deemed the risk associated with these transactions as low, thereby not necessitating further income verification under the risk-based approach permitted by the regulations, as all of transactions were of small amounts. This approach is consistent with the flexibility provided by the AML/CFT framework to tailor due diligence measures according to the assessed risk level of each transaction or business relationship...





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Response to Point (iii) – Absence of AML On-going Monitoring System:

The notice points to an alleged deficiency in our ongoing monitoring system under Regulation 19(1)(c). It is crucial to understand that our organization employs a sophisticated monitoring system integrated within our customer management software, which includes KYC and ongoing CDD features which includes 2FA requirements at time of transactions, as well as at time of accessing our application. As an example, someone may be approved for a transaction and then the next declined, based on ongoing monitored data points. This system is regularly reviewed and updated to ensure compliance with all regulatory requirements, including those for higher-risk customers. The claim that our system is non-compliant may stem from a misunderstanding of the software's capabilities or an oversight during the inspection. We are prepared to provide a detailed demonstration of our system's functionalities to clarify any discrepancies and confirm our compliance.

Response to Point (iv) - Beneficial Owners are not Identified:

In response to the concerns raised about the identification of beneficial owners as per Regulation 16, our firm has established a comprehensive process for verifying the identity of beneficial owners at the time of establishing a business relationship or during the conduct thereof. The specific instances where information was not recorded were cases where the beneficial ownership was transparent and did not differ from the direct ownership, hence was not separately documented. We acknowledge this discrepancy in documentation and are currently reviewing our processes to ensure that all beneficial ownership information is explicitly recorded, even in cases where beneficial owners are direct owners.

Response to Alleged Violations Cited in the Review Notice...

1. Comprehensive Review and Compliance Measures:

- Upon receiving your notice, we conducted a thorough review of our compliance protocols and customer records to ascertain the specific areas of concern.
- Our findings indicate that our compliance measures, including the identification and verification processes, as well as ongoing monitoring systems, have been implemented in accordance with the stipulated AML/CFT regulations. Our processes are designed to adapt to and address the complexities associated with different customer profiles and transactional behaviors.

2. Specific Responses to Alleged Violations:

• Regulation 8(3) and Risk Categorization

We have a dynamic risk categorization system that updates the risk profiles of our customers based on their transactional behaviors and other relevant factors rather than static initial assessments. This system is in line with the risk-based approach recommended by the AML/CFT Regulations.

• Regulation 9 and Note (i)(o):

Concerning the collection of income proofs, our protocols require collection where such information materially impacts the risk assessment. In instances cited where income proof



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was not collected, the transactional risk was assessed as low, negating the need for further documentation under our risk-based framework.

- **Monitoring: Regulation 19(1)(c) On going:**
Our ongoing monitoring system integrates advanced analytical tools that assess customer transactions in real time, ensuring compliance with regulatory expectations for all risk categories.
- **Regulation 16 Beneficial Ownership:** *We recognize the importance of identifying beneficial owners in the establishment of business relationships. Our processes ensure identification and verification at the time of customer onboarding and are periodically updated to capture any significant changes affecting beneficial ownership. As the owner of the account must be the one to authorize the transaction, the one performing the transaction must be the beneficial owner. Since Pakistan supports individual freedoms as a global standard, we support those that fall under this category.*

3. Commitment to Regulatory Compliance:

We remain committed to upholding the highest standards of compliance as required by the SECP and are continually reviewing and enhancing our systems and processes to prevent any lapses...

12. I have examined the facts of the case in light of the applicable provisions of the law and have given due consideration to the written as well as verbal submissions and arguments of the Respondent/ Representatives. At this juncture, it is imperative to discuss the following:

(i) Absence of AML Risk-Categorization Process:

Regulation 8(3) of the AML/CFT Regulations explicitly requires that the regulated person shall categorize each customer's risk based on the outcome of the CDD process. This means assigning a specific risk category to each customer following the initial CDD. While the Respondent's argument for a dynamic risk assessment model that evolves with ongoing transaction monitoring is noted, it does not replace the need for an initial risk categorization during onboarding. The regulation clearly mandates a categorization at the outset, which serves as a foundation for ongoing monitoring and risk management.

Continuous monitoring and adapting to evolving risk profiles is commendable and indeed an integral part of AML/CFT compliance. However, this should complement the initial risk categorization, not substitute it. The absence of an initial risk category undermines the structured approach required by the AML/CFT Regulations.

The inspection report's finding that the risk category section was marked as N/A directly contradicts the requirement of regulation 8(3) of AML/CFT Regulations. The lack of explicit risk categorization in the reviewed records demonstrates non-compliance with the regulation's clear directive. Relying solely on an integrated risk assessment system without documenting initial risk categories fails to meet the regulatory standard. Proper documentation is essential for transparency, accountability, and audit purposes.



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The Respondent's claim that a holistic approach to risk management is more effective does not negate the need for compliance with specific regulatory requirements. Initial risk categorization is a fundamental step in the AML/CFT framework, ensuring that all customers are appropriately classified and monitored from the beginning of the relationship. A holistic approach should enhance regulatory compliance, not bypass fundamental requirements. Initial categorization, followed by dynamic monitoring, provides a comprehensive risk management strategy that aligns with regulatory expectations. Failure to assign initial risk categories can lead to inadequate risk assessment and mitigation strategies, potentially exposing the firm to higher risks of money laundering and terrorist financing activities. In view of the aforesaid, it is established that the Respondent was in contravention of the requirements of regulation 8(3) of AML/CFT Regulations.

(ii) Non-collection of Income's Proof:

Regulation 9 mandates that the regulated person shall identify the customer and verify their identity using reliable and independent documents, data, and information. Note (i)(o) to the Annexure requires the collection and recording of information on the customer's profession and source of income, such as salary, business, or investment income. Note (iii) to the Annexure specifically requires that for salaried individuals, a copy of their salary slip, service card, certificate, or a letter on the employer's letterhead must be obtained (as and when applicable).

While the AML/CFT framework allows for a risk-based approach, this does not exempt the Respondent from complying with the specific requirements of regulation 9 and its associated notes. The collection of income proof is a mandatory requirement for all customers, irrespective of the perceived risk level, as it forms a crucial part of the CDD process. This is necessary to accurately assess and verify the customer's financial situation and source of funds.

The Company's argument that income verification is only necessary for higher-risk transactions overlooks the fact that regulation 9 and the Annexure do not provide such an exemption. The regulation specifies that income information must be obtained and verified as part of the initial CDD process. Even if the transactions were of small amounts and deemed low risk, the initial CDD, including income verification, must be completed to ensure a comprehensive risk assessment. The inspection team's findings clearly show that income proof was not collected for the sampled customers, indicating non-compliance with regulation 9 read with the Annexure of the AML/CFT Regulations.

The Company's future plans to update their module to include this requirement do not address the current non-compliance. The Regulations require immediate adherence, and any delays in implementing these measures result in regulatory breaches. The flexibility provided by the AML/CFT framework to tailor due diligence measures according to the assessed risk level does not override the explicit requirements set out in the Regulations. The Company must ensure that all mandatory information, including income proof, is collected during the CDD process, regardless of the assessed risk level of individual transactions.



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(iii) Absence of AML's On-going Monitoring System:

Regulation 19(1)(c) of the AML/CFT Regulations requires regulated entities to conduct ongoing due diligence on business relationships, including maintaining up-to-date CDD information and conducting regular reviews.

The Company asserts that it employs a sophisticated monitoring system integrated into their customer management software, which includes KYC and ongoing CDD features. This system also incorporates 2-factor authentication requirements for transactions and application access. However, the inspection team's findings indicate a lack of detailed documentation and transparency regarding the internal CDD mechanism and policies related to onboarding procedures.

The Respondent's failure to provide details of its internal CDD mechanism and policies suggests a gap in regulatory compliance. Effective compliance requires documented procedures that outline how CDD is conducted, monitored, and updated over time. The absence of a documented policy related to onboarding procedures, coupled with the recent agreement suggesting the introduction of an ongoing monitoring system, raises concerns about historical compliance and adherence to regulatory requirements.

While the Respondent claims to have implemented a comprehensive monitoring system, the lack of documented evidence and historical policies undermines the assurance of ongoing compliance with regulation 19(1)(c) of AML/CFT Regulations. The inspection team's observations highlight the importance of not only implementing but also documenting and periodically reviewing, internal processes to ensure continuous adherence to AML/CFT Regulations.

(iv) Non-identification of Beneficial Owners:

Regulation 16 of the AML/CFT Regulations explicitly mandates that the regulated person must verify the identity of the beneficial owner before or during the establishment of a business relationship. This requirement is crucial to ensure transparency and mitigate the risks associated with money laundering and terrorist financing.

The Respondent acknowledges establishing a process for verifying beneficial owners but justifies instances where information was not recorded due to the transparency of beneficial ownership aligned with direct ownership. They argue that separate documentation was deemed unnecessary in these cases. Regulation 16 of AML/CFT Regulations specifically requires the explicit identification and documentation of beneficial owners to ensure a thorough assessment of ownership structures and compliance with regulatory standards. Compliance with regulation 16 necessitates a systematic approach to identifying and documenting beneficial owners, irrespective of transparency in ownership structure. This includes maintaining records that clearly outline the relationship between beneficial owners and the entity with whom the business relationship is established.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Continuation Sheet - 14 -

During the inspection, it was noted that the Respondent verifies individuals through ID documents as part of the loan application process. However, there was a lack of specific documentation outlining the ID document requirements for BNPL (Buy Now, Pay Later) customers. Additionally, the inspection highlighted that there is no established policy, process, or mechanism for identifying beneficial owners. In view of the findings of the inspection team, the Respondent was found non-compliant with regulation 16 of AML/CFR Regulations.

The Respondent's commitment to review and enhance their processes is commendable. However, ongoing adherence to regulatory requirements, including meticulous documentation of beneficial ownership, is essential to mitigate compliance risks and ensure regulatory compliance.

13. In view of the foregoing and the admission made by the Respondent and the Representative, contravention of regulations 8(3), 9 read with Note (i)(0) and (iii) of the Annexure, 19(1)(c) and 16 of the AML/CFT Regulations has been established, which attract imposition of penalty under regulation 31 of the AML/CFT Regulations read with rules 4(1)(a) and 6(1) of the AML Rules and section 6A(2)(h) of the AML Act. I hereby, in terms of powers conferred upon me under Section 6(A)(2)(h) of the AML Act impose penalty of **Rs.1,000,000/- (Rupees One Million only)** on the Respondent on account of the aforesaid conceded and established non-compliances of applicable provisions of the law.

14. The Respondent is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and furnish receipted voucher issued in the name of the Commission for information and record.

15. 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.

Mahboob Ahmed

Additional Director / Head of Wing
Licensed Entities-Adjudication Department-I

Announced:

October 10, 2024
Islamabad