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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

HABIB METROPOLITAN FINANCIAL SERVICES LIMITED

Show Cause Notice No. & Issue Date:	1(172)SMD/Adj-1/KHI/2019 dated June 28, 2024
Date(s) of Hearings:	July 25, 2024
Present at the Hearing	Mr. Ather Hussain Medina – CEO Mr. Muhammad Waqas Younus – Head of Operations

ORDER

UNDER REGULATION 31 OF THE SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN (ANTI MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM) REGULATIONS, 2020 READ WITH SECTION 6(A)(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 through the Show Cause Notice dated June 28, 2024 (**the SCN**) by the Securities and Exchange Commission of Pakistan (**the Commission**) against Habib Metropolitan Financial Services L(**the Respondent and/or the Company**) on account of alleged contravention of Regulation 12, 19 and 21(2)(c) under Regulation 31 of Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2020 (**the AML/CFT Regulations**) read with Section 6(A)(2)(h) of the Anti-Money Laundering Act, 2010 (**the AML Act**) and Rule 4(1)(a) and 6(1) of the AML/ CFT Sanctions Rules, 2020 (**the AML/CFT Rules**). The inspection of the Company was carried out by the Joint Inspection Team (JIT) from July 01, 2023 to September 30, 2023.

2. The Respondent was, *prima facie*, found non-compliant with the provisions of Regulation 12, 19 and 21(2)(c) of the AML/CFT Regulations detailed as under:

- In one instance of a legal person (CDC Sub A/c # 820), the Respondent failed to provide list of directors and documentary evidence to understand nature of customer's business and its ownership and control structure, which is in contravention of Regulation 12 and 19(c) of the AML/CFT Regulations.
- The Respondent failed to perform Enhanced Due Diligence (EDD) for the afore-mentioned high-risk client, therefore, in contravention of Regulation 21(2) of the AML/CFT Regulations.

4. **AND WHEREAS**, the aforementioned, *prima facie*, non-compliances attract the applicability of Regulation 31 of the AML/CFT Regulations read with Section 6(A)(2)(h) of the Anti-Money Laundering Act, 2010 (**the AML Act**) and Rule 4(1)(a) and 6(1) of the AML/ CFT Sanctions Rules, 2020 (**the AML/CFT Rules**). The relevant provisions are reproduced as under:



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Regulations 31 of the 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 to sanction provided in the AML/CFT Sanctions Rules, 2020 and imposed by the Commission according to Clause (h) of Sub-section (2) of Section 6A of AML Act."

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

"2. (h) impose sanctions, including monetary and administrative penalties to the extent and in the manners 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;"

Rules 4(1)(a) of the AML/CFT Rules:

"(a) Impose a monetary penalty in accordance with these Rules;"

Rule 6(1) of the AML/CFT Rules:

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

5. While taking cognizance in the aforesaid matter, the SCN was issued to the Respondent, calling upon it to show cause in writing as to why penalty as provided under Regulation 31 of the AML/CFT Regulations read with Rules 4(1)(a) and 6(1) of the AML Rules and Section 6(A)(2)(h) of the AML Act, may not be imposed on it for contravening the aforementioned provisions of the law. In response to the SCN the Respondent vide its letter dated July 10, 2024 has submitted as under:

"This is with reference to the above-captioned subject an Show Cause Notice bearing reference No. dated; June 28, 2024. regarding the inspection conducted by the Joint, Inspection Team (JIT) for the period from July 01, 2023 to September 30, 2023.

We would like to respectfully point out that the SECP (AML/CFT/CPF) Regulations 2020 state in Clause 3. Definitions sub-clause "dormant or in-operative account" means the account which no transaction or activity or financial service has been extended by the regulated person from the last three years.

Furthermore, under the Clause 20, Existing Customers, sub-clause (3) states that, "For customers whose accounts are dormant or in-operative withdrawals shall not be allowed until the account is activated on the request of the customer. For activation, the regulated person shall conduct NADRA Verisys or biometric verification of the customer and obtain attested copy of customer's valid identity document (if not already available) and fulfill regulatory requirements."

The said customer account was opened on 17 March, 2010 thus making it an Existing Customer at the time the above regulation was issued in 2020. Furthermore, we would like to apprise you that no transactions have been executed by this customer in more than 10 years with the last transaction being executed on 28 November, 2011, and the client is currently inactive. We are enclosing the CDC reports of the client as Annexure-A to evidence status of account. Therefore, due diligence requirements to meet the current regulatory requirements could not be applied thereon.

We would like to bring into your kind attention that HMFS had segregated its account portfolio on the basis of active clients and inactive clients for prioritization of completion of CDD/EDD for active accounts. HMFS Board approved policy for dealing with inactive clients / accounts is also in place



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which clearly specifies that Dormant Account can only be activated on completion of all pending KYC discrepancies, if any. The relevant excerpt of the PMFS BOD approved 'Dealing with Inactive Clients Policy' is reproduced below:

"RE-ACTIVATION OF DORMANT ACCOUNT

Dormant Account can become active on the completion of the following requirements:

- *In-person biometric verification of Sub-Account Holder; or confirmation through OTP generated on registered mobile number; or confirmation through OTP generated on registered email address, in case of non-resident foreign investor*
- *Completion of all pending KYC discrepancies if any; and*
- *Recovery of all charges and dues (including for period under Dormancy).*

HMFS will request CDC for removal of Dormancy via request letter signed by authorized signatories and confirm that requirements as per CDC Procedure for Controlled Sub-Account have been fulfilled.

We assure you that all due diligence along with EDD requirements will be fulfilled as and when the customer approaches for execution of transaction."

6. In order to provide the Respondent an opportunity of personal representation, hearing in the matter was fixed for July 25, 2024 which was attended by Mr. Ather Husain Medina (CEO) and Mr. Muhammad Waqar Younus (Head of Operations) as its Authorized Representatives (**the Representatives**). 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 same stance as taken in its written response to the SCN. It was submitted that the account under consideration was opened on March 17, 2010 and no transactions have been executed by this customer in more than 10 years with the last transaction being executed on November 28, 2011, making the client currently inactive. Further, that the Company has segregated its account portfolio on the basis of active and inactive clients for prioritization of completion of CDD/EDD for active accounts. Moreover, the board of the Company has approved policy for dealing with inactive clients' accounts which clearly specifies that Dormant account can only be activated on completion of all pending KYC discrepancies, if any.

7. Subsequent to the hearing proceedings, the Respondent provided additional submissions vide its letter dated July 31, 2024, the relevant extract of which is provided as under:

"With regards to the query relating to the securities held in our custody for the customer bearing CDC Sub A/c # 820, the said account was opened on March 17, 2010, while the first transaction was executed by the customer in the said account on October 28, 2011. The last transaction in the said account was conducted by the customer on November 28, 2011 at which time the amount held under custody in the said account was Rs. 18.81 million as at the market price of the securities on that day. Thereafter, no further transactions have been conducted by the customer in the said account, however, recent market rally has increased the amount under custody in the said account to Rs. 78.73 million as at July 26, 2024.

Furthermore, the Board of Directors of Habib Metropolitan Financial Services Ltd. actively and regularly monitor compliance issues, and in this respect had approved the HMFS "Dealing with Inactive Clients Policy" via Circular Resolution No. 005 of 2023 passed on July 31, 2023. We would like to reiterate that as per the BOD approved policy, HMFS has segregated its account portfolio on the



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basis of active clients and inactive clients for prioritization of completion of CDD/EDD for active accounts. A true copy of the circular resolution is attached to this letter as documentary evidence.”

8. 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 and its Representatives. At this juncture, it is important to address the following queries:

a. **How does the Company's failure to provide correspondence with the client regarding KYC/CDD documentation impact compliance with AML/CFT Regulations, given the high-risk status and substantial value of the dormant account (CDC Sub A/c No. 820)?**

i. The client account (CDC Sub A/c No. 820) is classified as dormant by the Company, with no transactions executed since November 28, 2011. The account holds securities that have increased in value from Rs. 18.81 million (as of 2011) to Rs. 78.73 million (as of July 26, 2024). The account is considered high risk, and the following key documentary evidences are missing:

- A list of directors.
- Information to understand the nature of the customer's business.
- Documentation on the ownership and control structure.

Under Regulation 12 of the AML/CFT Regulations, financial institutions are required to obtain such information to identify and verify the identity of the legal person and understand the nature of its business and ownership structure. The lack of these documents means the Respondent failed to comply with the Customer Due Diligence (CDD) requirements under Regulation 12 and Regulation 19(1)(c), which mandates that documents and data for CDD purposes be kept up-to-date, especially for higher-risk accounts

- ii. The Company explained that the client account was opened on March 17, 2010, and has remained inactive since the last transaction on November 28, 2011. They attached CDC reports to substantiate the account's inactive status. The Company asserted that due diligence requirements could not be applied to the dormant account, as no customer-initiated activity had occurred in over a decade.
- iii. The Company argues that the dormant status of the account exempts it from immediately fulfilling the CDD and EDD requirements until the client requests activation. The AML/CFT Regulations 2020 indeed acknowledge the concept of dormant accounts, and withdrawals from such accounts are not permitted until reactivation is requested by the client. However, this argument does not absolve the Respondent from maintaining up-to-date records on the account.
- iv. The Company failed to provide any evidence of correspondence with the client concerning the completion of KYC/CDD-related documentation. Regulation 19(1)(c) of the AML/CFT Regulations requires that the regulated entity undertake reviews of existing records and ensure that documents, data, or information collected for CDD purposes are kept up-to-date and relevant, particularly for higher-risk customers. Given the substantial value of securities in the account (currently Rs. 78.73 million as of July 26, 2024), CDC Sub A/c No. 820 qualifies as a high-risk account, which necessitates enhanced scrutiny in terms of Regulation 21(2) of the AML/CFT Regulations.



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b. Given the Company's policy to prioritize active accounts for CDD/EDD completion, how does the absence of correspondence with dormant clients regarding KYC/CDD documentation impact regulatory compliance?

- i. The Company has implemented a policy to prioritize active accounts for CDD/EDD completion, which reflects a strategic approach to managing resources and compliance efforts efficiently. However, it is important to recognize that the Company has not provided evidence of correspondence with the client regarding the completion of KYC/CDD documentation for dormant accounts. This omission suggests a gap in the Company's proactive efforts to address KYC/CDD requirements for inactive accounts. While the policy effectively focuses on managing active accounts, the lack of correspondence or follow-up on dormant accounts indicates a missed opportunity to ensure that all regulatory obligations are met.
- ii. It should be noted that the policy aims to streamline compliance processes and focus on accounts with active transactions, which can be seen as a reasonable approach to managing operational efficiency. Nonetheless, the Company is encouraged to enhance its procedures by including mechanisms for documenting efforts to complete KYC/CDD requirements for dormant accounts. This additional measure would help bridge the compliance gap and align the policy more closely with regulatory expectations

9. In view of the foregoing arguments and the written and verbal submissions made by the Respondent and its Representatives, non-compliances/ contraventions of the Regulation 12, 19(1)(c) and 21(2) of the AML/CFT Regulations in one (1) instance which attract the 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. Therefore, I, in terms of powers conferred upon me under 6(A)(2)(h) of the AML Act, impose a penalty of **Rs. 20,000/- (Rupees Twenty Thousand only)** on the Respondent on account of established default.

10. The Respondent is also advised to ensure meticulous compliance with all applicable laws of Anti Money Laundering and Countering Financing of Terrorism in true letter and spirit, henceforth.

11. 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.

12. 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 Ahmad)
Additional Director / Head of Wing
Licensed Entities - Adjudication Department-I

Announced:
September 30, 2024
Islamabad

