



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before Hammad Javed, Additional Director/Head of Wing
(Licensed Entities-Adjudication Department-I)

In the matter of

Arif Habib Commodities (Pvt.) Limited

Show Cause Notice No. & Issue Date:	No.2(410)SMD/Adj-I/2023-975 dated May 30, 2023
Date of Hearing:	July 13, 2023
Present at the Hearing Representing the Respondent	Ms. Sukaina Naseer, Advocate-Tax Clinic (Authorized Representative)
Date of Order:	July 31, 2023

ORDER

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

This Order shall dispose of the proceedings initiated through the Show Cause Notice (the SCN) No.2(410)SMD/Adj-I/2023-975 dated May 30, 2023 by the Securities and Exchange Commission of Pakistan (the Commission) against Arif Habib Commodities (Pvt.) Limited (the Respondent and/or the Company) for alleged contravention of the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2020 (the AML/CFT Regulations) under Regulation 31 of the AML/CFT Regulations read with Rule 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. The Company/Respondent was incorporated on April 2, 2012 as a private limited company under the Companies Act, 2017 (the Act). The Company is a member of Pakistan Mercantile Exchange (PMEX) and licensed as futures broker the Commission under the Futures Brokers (Licensing and Operations) Regulations, 2018 (the FB Regulations).

3. It was transpired from the record available with the Commission that the review of the Company was carried out **from July 01, 2021 to June 30, 2022 (the review period)** by the Inspection team of PMEX. The scope of review included examining compliance status with respect to certain provisions, stipulated under the AML/CFT Regulations.

4. The Inspection transpired that the Company, *prima facie*, has been non-compliant with the AML/CFT Regulations, detailed as under:

(i) Clause (o) of Note (i) to Annex-1 of the AML/CFT Regulations stipulates for due diligence process, the Regulated person shall obtain documentary evidence related to source of income/details of business.

It was transpired during the inspection that in nine (09) instances, the Respondent has not provided the source of income/details of business for its customers.

(ii) Regulation 9 of the AML/CFT Regulations stipulates that the regulated person shall verify the identity of that customer using reliable and independent documents, data and information set





SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Division Adjudication Department-I

out in Annex 1.

It was transpired during the inspection that in two (2) instances, the Respondent has not provided any documentary evidence related to Mr. Khair Ul Mubeen Khan and KYC Form of Mr. Shahzeb Khalid.

(iii) Regulation 8 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.

It was transpired during the inspection that in ten (10) instances, the Respondent has not provided any documentary evidence related to risk profiling of its customers. Further, the Respondent has also not provided source of income or business details for these customers.

(iv) Note (v) to Annex-1 of the AML/CFT Regulations stipulates that the Regulated person shall design update their systems which can generate alerts about the expiry of CNICs at least 01 month before actual date of expiry and shall continue to take reasonable measures to immediately obtain copies of renewed CNICs, whenever expired.

It was transpired during the inspection that in one (01) instances, the Respondent has provided Expired CNIC copy provided of Mr. Jahanghir Farhat Khan.

(v) Regulation 25(1)(a) of the AML/CFT Regulation stipulates that the regulated person shall undertake TFS obligations under the United Nations (Security Council) Act, 1948 and/or Anti-Terrorism Act, 1997 and any regulations made there under, including developing mechanisms, processes and procedures for screening and monitoring customers, potential customers and beneficial owners/associates of customers to detect any matches or potential matches with the stated designated/proscribed persons in the SROs and notification issued by Ministry of Foreign Affairs (MoFA), National Counter Terrorism Authority (NACTA) and Ministry of Interior (MoI).

During the Inspection, it was transpired that in three (03) instances the Respondent failed to provide any documentary evidence to demonstrate screening of its new customers at the time of opening of account including their nominee/joint account holder/authorized person which reflect that the Respondent, prima facie, failed to demonstrate compliance with Regulation 25(1)(a) of the AML/CFT Regulations.

6. The aforesaid violations attract applicability of Regulation 31 of the AML/CFT Regulations read with Rules 4(1)(a) and 6(1) of the AML Sanction Rules, 2020 and Section 6A(2)(h) of the AML Act, 2010 which are reproduced as under:

Regulation 31(1) 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."

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

*"(1) On any contravention as set out in rule 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;"*





SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Division Adjudication Department-I

Rule 6(1) of the AML 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."

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

"(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,"

7. Keeping in view the aforesaid contravention, the SCN was issued to the Respondent/Company, calling upon it to show cause in writing as to why the 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.

8. In response to the SCN, the Company through letter dated June 20, 2023 submitted on merits as under:

".... In this connection, we would like to submit that we have complied with all the deficiencies as highlighted in your notice and enclosing documents as proof/evidence duly authenticated as "True Certified Copy" and signed as required in your notice as listed below:

- i. Documentary proof of source of income of nine (09) customers.*
- ii. Know Your Customer "KYC" form duly filed and signed along with copy of CNIC of Mr. Khair ul Mubeen Khan and Mr. Shahzeb Khalid.*
- iii. Document related to risk profiling of ten (10) customers.*
- iv. Updated copy of CNIC of Mr. Jahangir Farhat Khan*
- v. Account Opening Form of new customers of Mr. Shahzeb Khalid, Mr. Nadeem Akhtar and Mr. Ahmed Raza.*

Therefore, it is humbly requested, in the interest of natural justice and fair play, to kindly acknowledge our above submission, since, our client has duly complied with all the discrepancies as highlighted by your good-self."

9. The hearing in the matter was fixed for June 20, 2023 wherein Ms. Sukaina Naseer, Advocate-Tax Clinic appeared before the undersigned as the Authorized Representative (**Representative**) on behalf of the Company. During the course of hearing, the Representative was advised to explain the reasons for the alleged non-compliances, as narrated in the SCN. The Representative reiterated the stance taken in the aforementioned written reply by the Company and admitted the default on part of the Respondent. However, subsequent to the SCN, the documentary evidences have been provided by the Company. Moreover, the Representative assured compliance with the AML/CFT requirements in the future in true letter and spirit.

10. The Representative further submitted that there was shortage of staff which caused mismanagement in complying with the provisions of the law due to which such non-compliances have occurred. The Representative assured that the Company will remain compliant with all the AML/CFT requirements in true letter and spirit in the future.

11. 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 Representative.





SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Division Adjudication Department-I

I am of the considered view that the Company was required to comply with the requirements of aforesaid provisions of law and observed that the Respondent:

- remained non-compliant in terms of requirement of Clause (o) of Note (i) to Annex-1 of the AML/CFT Regulations in nine (09) instances as the Respondent has not provided the source of income/details of business for its customers. The Respondent provided documentary evidences with respect to source of income/ funds of the 9 clients which were arranged subsequent to the inspection findings.
- remained non-compliant in terms of requirement of Regulation 9 of the AML/CFT Regulations in one (1) instance as the Respondent has not provided KYC Form of Mr. Shahzeb Khalid. The Respondent admitted that the documents were not available during the inspection however, subsequently these documents have been provided in reply to the SCN.
- remained non-compliant in terms of requirement of Regulation 8 of the AML Regulations as in ten (10) instances, the Respondent has not provided any risk profiling of its customers, rather it has provided risk rating only. The Respondent admitted that such documents were not obtained at the time of inspection however, subsequently, the requisite documentation has been collected from the clients and were provided in reply to the SCN.
- remained non-compliant in terms of requirement of Note (v) to Annex-1 of the AML/CFT Regulations in one (01) instances, the Respondent has provided Expired CNIC copy of Mr. Jahanghir Farhat Khan. The Respondent has subsequently obtained updated CNIC of the client.
- remained non-compliant in terms of requirement of Regulation 25(1)(a) of the AML/CFT Regulations in three (03) instances as the Respondent failed to provide any documentary evidence to demonstrate screening of its new customers at the time of opening of account including their nominee/joint account holder/authorized person. The Respondent assured that it has now updated its systems/ procedures to perform screening at the time of account opening of new clients.

12. In view of the foregoing and the admission made by the Representative, non-compliances/ contraventions of the provisions in afore-stated instances have been established, which attract imposition of penalty under Regulation 31 of the AML/CFT Regulations read 2010 read with rules 4(1)(a) and 6(1) of the AML Rules and Section 6A(2)(h) of the AML Act. Hence, in exercise of the powers conferred under Section 6A(2)(h) of the AML Act read with rules 4(1)(a) and 6(1) of the Rules, I hereby impose penalty of **Rs.100,000/- (Rupees One Hundred Thousand Only)** on the Company on account of the aforesaid conceded and established non-compliances of aforesaid provisions of the law. The Respondent is advised to ensure meticulous compliance of all applicable AML/CFT laws in the future.

13. The Company is hereby directed to deposit the aforementioned fine in the designated Bank Account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days of the date of this Order and furnish receipted voucher evidencing payment of the same.

14. 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.



(Hammad Jayed)

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