



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

Nachfolger (Private) Limited

Show Cause Notice No. & Issue Date:	No.2(289)SMD/Adj-I/2021-1032 dated June 20, 2023
Date(s) of Hearings:	July 18, 2023 and July 24, 2023
Present at the Hearing Representing the Respondent	Mr. Soban Shahid, Compliance Officer (<i>Authorized Representative</i>)

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(289)SMD/Adj-I/2021-1032 dated June 20, 2023 by the Securities and Exchange Commission of Pakistan (**the Commission**) against Nachfolger (Private) 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. 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 team of PMEX. The scope of review included examining compliance status with respect to certain provisions, stipulated the AML/CFT Regulations.

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

(i) Regulation 9 of the AML/CFT Regulations stipulates that the regulated person shall identify its customers by using reliable data and information as set out in Annex-1.

It was transpired during the Inspection that in four instances (4) the Company/Respondent has not provided the documentary evidence related to the source of income of the following clients/customers;

Client No.	Trading ID
1	203270238
2	203270167
3	203270156
4	203270240





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The Company/Respondent has not provided source of income of the aforesaid clients to justify their investment which reflect that the Company/Respondent has, *prima facie*, failed to demonstrate compliance with Serial 1 and Note (i) of Annex-1 read with Regulation 9 of the AML/CFT Regulations.

(ii) Regulation 8 of the AML/CFT Regulations stipulates that the regulated person shall conduct CDD in a prescribed manner and shall categorize each customer's risk depending on the outcome of the CDD process.

It was transpired during the Inspection that in ten instances (10) the Company/Respondent has not provided CDD/Risk profiling of the following clients/customers:

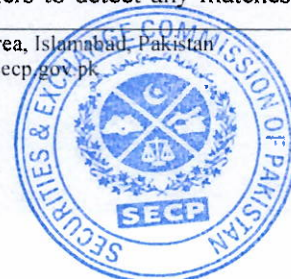
Client No.	Trading ID
1	203270255
2	203270258
3	203270238
4	203270221
5	203270167
6	203270218
7	203270242
8	203270265
9	203270156
10	203270240

Moreover, in eight instances (8) the Company/Respondent has also not provided copies of NADRA Verisys of the following clients/customers:

Client No.	Trading ID
1	203270255
2	203270258
3	203270238
4	203270218
5	203270242
6	203270265
7	203270156
8	203270240

Therefore, the Company/Respondent has not provided KYC, CDD form of client and copies of NADRA Verisys, which reflect that the Company/Respondent has, *prima facie*, failed to demonstrate compliance with Regulation 8 and Note (ii) of Annex-1 read with Regulation 9 of the AML/CFT Regulations.

(iii) 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



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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).

It was transpired during the Inspection that the Company/Respondent has not performed screening of its new customers including their nominee/joint account holder/authorized person at the time of opening of account, which reflect that the Company/Respondent has, *prima facie*, failed to demonstrate compliance with Regulation 25(1)(a) of the AML/CFT Regulations.

(iv) Regulation 27(1)(d) of the AML/CFT Regulations stipulates that the regulated person shall develop internal audit function for compliance program.

It was transpired during the Inspection that the Company/Respondent has not developed an independent audit function, which reflects that the Company/Respondent has, *prima facie*, failed to demonstrate compliance with Regulation 27(1)(d) of the AML/CFT Regulations.

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

Regulation 8 of the AML/CFT Regulations

"(1) the regulated person shall conduct CDD in the circumstances and matters set out in section 7A(I) and 7(E) of the AML Act;
(2) For the purposes of conducting CDD as required under section 7A (2) of the AML Act every regulated person shall comply with sections 9-25 of these Regulations; and
(3) The regulated person shall categorize each customer's risk depending upon the outcome of the CDD process."

Regulation 9 of the AML/CFT Regulations

"The regulated person shall:
(a) identify the customer; and
(b) verify the identity of that customer using reliable and independent documents, data and information as set out in Annex 1."

Serial 1 of Annex-1 to the AML/CFT Regulations

S No.	Type of Customer	Minimum Documents required for CDD
1.	Individuals	A photocopy of any one of the following valid identity documents: (i) Computerized National Identity Card (CNIC)/Smart National Identity Card (SNIC) issued by NADRA. (ii) National Identity Card for Overseas Pakistani (NICOP/SNICOP) issued by NADRA. (iii) Form-B/Juvenile card issued by NADRA to children under the age of 18 years. (iv) Pakistan Origin Card (POC) issued by NADRA. (v) Alien Registration Card (ARC) issued by National Aliens Registration Authority (NARA), Ministry of Interior (local currency account only). (vi) Valid Proof of Registration (POR) Card issued by NADRA (vii) Passport; having valid visa on it or any other proof of legal stay along with passport (foreign national individuals only).





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Note (i)(o) of Annex-1 of the AML/CFT Regulations:

"(i) For due diligence purposes, at the minimum following information shall also be obtained and recorded on KYC (Know Your Customer)/CDD form or account opening form:

(o) Profession / Source of Earnings/ Income: Salary, Business, investment income;"

Note (ii) of Annex-1 of the AML/CFT Regulations:

"(ii) The photocopies of identity documents shall be validated through NADRA verisys or Biometric Verification. The regulated person shall retain copy of NADRA Verisys or Biometric Verification (hard or digitally) as a proof of obtaining identity from customer."

Regulation 25(1)(a) of the AML/CFT Regulations:

"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: (a) develop 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 notifications issued by MoFA, NACTA and MoI."

Regulation 27(1)(d) of the AML/CFT Regulations:

"(1) In order to implement compliance programs as set out in 7G of the AML Act, the regulated person shall implement the following internal policies, procedures and controls:

(d) an independent audit function to test the system."

5. 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 Rules and Section 6A(2)(h) of the AML Act, 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;"

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



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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 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.

7. In response to the SCN, the Company through letter dated July 23, 2023 submitted on merits as under:

"...3.(i). Response to the following 4 instances, where the source of income was not provided, is submitted below please: -

<i>Client No.</i>	<i>Trading ID</i>	<i>Nachfolger Remarks / Feedback</i>
1.	203270238	<i>It was a joint trading account, whereby Mr.... was the primary account holder. And Mr. ...was the secondary account holder. The income sources of both clients are attached herewith please. Mr..., the primary account holder, provided a letterhead of his company, (Pvt.) Ltd., citing its income as the source of funds used for trading. Mr..., being a Government official, provided his Salary Slip as income source. Both are attached herewith please.</i>
2.	203270167	<i>Mr....., cited himself as a retired..., still on a sensitive appointment, postretirement (which is common in this institution). As a result, he was reluctant to disclose his exact income source, for sensitivity reasons. However, he asked us to check his active taxpayer status, which is attached herewith please.</i>
3.	203270156	<i>Mrs.... cited the proceeds from disposal of a property (plot) as her income source. A copy of the property's sale deed is attached herewith please.</i>
4.	203270240	<i>Despite our repeated reminders to furnish a source of income, the client displayed reluctance. Consequently, we suspended the client, and the status of client shall remain suspended till completion of this requirement.</i>



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3.(ii). It is submitted that we have been performing Customer Due Diligence (CDD) and risk profiling of on-boarded customers. However, we regretfully did not properly document this entire activity and shall adopt this practice going forward please.

So far as the non-provisioning of NADRA Verisys of 8 customers is concerned, kindly note that this requirement / procedure was relaxed, due to the Covid-19 pandemic, and the consequential lock-down. As a result, the step of biometric verification (NADRA Verisys) was replaced by NCCPL, with a One Time Password (OTP).

Under this alternate system, the broker enters the following client information in NCCPL's KYC Portal:-

- CNIC #
- Resident Pakistani / NICOP holder status
- Name of the client, as per CNIC
- CNIC Issuance date
- Registered SIM # (which must be issued on the client's own CNIC)
- Valid email address
- Bank account # in IBAN format (with proof of IBAN in the form of a blank cheque, bank statement or account maintenance letter)

After verifying the above parameters, NCCPL generates and sends an OTP on the registered SIM of the client. Then, the client is supposed to share that OTP with us (the broker), within a stipulated time, after which the OTP expires and needs to be re-generated by the broker.

After receiving the OTP from client, the broker inputs that unique OTP in NCCPL's KYC Portal, and the client's verification (NADRA Verisys) is completed online, in a contactless manner.

The Client wise, and consolidated, successful Biometric Verification or OTP / Online Verification reports (whichever applicable), of the sampled 7 out of 8 clients are attached herewith please. Kindly consider them as a valid NADRA Verisys equivalent document / proof. The only exception is our client at S/No. 7, 203270156, Mrs. Sabira, who became our customer before the requirement of biometric / OTP verification was introduced. We have till Sep 30, 2023, as per NCCPL, to complete her formalities.

The CNIC copies of the sampled 8 clients are also attached herewith, for your reference please. Under the new system, a client's trading account cannot be initiated at PMEX end, unless either successful biometric verification has been performed, or the client's online verification has been performed successfully, via issuance of OTP by NCCPL.

If any clients were registered before the full implementation of the above regime (such as 203270156), NCCPL has provided brokers relaxation till Sep 30, 2023, to either complete their biometric verification, or online verification via OTP generation.

We are pursuing the few active clients whose verification is pending, for completing this formality, by NCCPL's stipulated deadline of Sep 30, 2023.

Kindly find attached the consolidated biometric and OTP verification reports for all our clients, extracted from NCCPL's KYC portal, reflecting the successful completion of this step for the sampled clients.

3.(iii). Please note that we perform screening of our customer database, against the proscribed individuals and entities notified via SROs issued by the Ministry of Foreign Affairs (MoFA), National Counter Terrorism Authority (NACTA) and the Ministry of Interior (MoI).

This activity is performed by us by logging into the e-Services portal of SECP, within the AML sub-menu.

We also have a complete database of the SROs complied by us, including our dates of compliance with each specific SRO (file attached).



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All the SROs complied by us, till date, are also stored in soft form, for future reference and retrieval please.

Despite performing this activity with diligence, any improvements suggested by your good office, regarding this activity, will be duly incorporated for future compliance please.

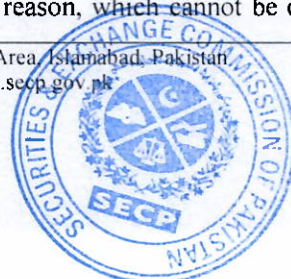
3.(iv). Going forward, we plan to engage a third-party to conduct the internal audit function for the compliance program, under intimation to SECP and PMEX. This will act as a replacement for setting up a dedicated, internal audit function please."

8. The hearing in the matter was fixed for July 18, 2023 which was not held as no one appeared on the behalf of the Company. The Second hearing opportunity was given to the Company and hearing in the matter was fixed for July 24, 2023 wherein Mr. Soban Shahid, Compliance Officer 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 including the evidences of subsequent compliance. However, the Representative admitted the default of alleged violations on part of the Respondent and assured compliance with the AML/CFT requirements in the future.

9. The Representative further submitted that in aforementioned four (4) instances, documentary evidences of the source of income of three (3) has been provided whereas the remaining one (1) instance, the account of the client has been suspended due to non-cooperation at the client's end. He also stated that the Company has been performing all the activities i.e. risk profiling of the clients, but has not been properly documented all the evidences as required under the law. Moreover, he also added that the Respondent has no separate arrangement with regards to an independent audit of AML/CFT systems rather the Compliance Officer, himself, is currently carrying out this task as well. Now, the Respondent has planned to engage a third party for the conducting independent audit of AML/CFT systems.

10. 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 the Representative. I am of the considered view that the Respondent was required to comply with the requirements of aforesaid provisions of AML/CFT Regulations and have observed that:

- The Respondent remained non-compliant in terms of requirement of Serial 1 and Note (i)(o) of Annex-1 read with Regulation 9 of the AML/CFT Regulations in four (04) instances as the Respondent did not have relevant documents/evidences of source of income of the aforesaid clients at the time of inspection thus the same could not be provided to justify their investments. However, subsequent compliance has been made by the Respondent.
- The Respondent remained non-compliant in terms of requirement of Regulation 8 of the AML/CFT Regulations in ten (10) instances as the Respondent failed to provide any evidence in support of its stance that it had been conducting CDD and CDD based risk categorization.
- The Respondent, in terms of Regulation 9 of the AML/CFT Regulations read with Serial No. 1 & Note (ii) of Annex-1 for eight (8) instances, initially failed to provide any evidence substantiating compliance therewith. However, the Respondent has now provided copies of relevant evidence dated February 13, 2023 regarding biometric verification in seven (7) out of referred eight (8) instances. The Respondent, for remaining one (1) client, submitted that its biometric verification would be completed by September 30, 2023 alongwith for a few other clients, citing relaxation provided by NCCPL as the reason, which cannot be construed as a



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plausible justification. Thus, violation of Regulation 9 of the AML/CFT Regulations read with Serial No. 1 & Note (ii) of Annex-1 is established.

- The Respondent remained non-compliant in terms of requirement of Regulation 25(1)(a) of the AML/CFT Regulations as the Respondent has not performed screening of its new customers at the time of opening of account including their nominee/joint account holder/authorized person. Although, the Respondent has submitted to have updated its system, yet no evidence no evidence or document substantiating its claims has been furnished by the Respondent.
- The Respondent remained non-compliant in terms of requirement of Regulation 27(1)(d) of the AML/CFT Regulations as the Respondent has failed to implement as an independent audit function as evident from its response to the SCN, which is an admitted position.

11. In view of the foregoing facts and the submissions made by the Respondent and the Representative, contraventions of the aforesaid provisions of AML/CFT Regulations have 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. Hence, in exercise of the powers conferred under upon me, I hereby impose penalty of **Rs.150,000/- (Rupees One Hundred and Fifty Thousand Only)** on the Company on account of the aforesaid conceded and established non-compliances of aforesaid provisions of the law.

12. 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.

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.



(Hammad Javed)

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

Announced:
August 11, 2023
Islamabad