

Before Amir M. Khan Afridi, Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Apex Capital Securities (Pvt.) Limited

Dates of Hearing

April 23, 2021

Order-Redacted Version

Order dated April 28, 2021 was passed by Director/Head of Department (Adjudication-I) in the matter of Apex Capital Securities (Pvt.) Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated February 22, 2021.
2. Name of Respondent	Apex Capital Securities (Pvt.) Limited (the Respondent)
3. Nature of Offence	<u>Alleged contraventions of regulations 9(3), 9(4), 15(3), 6(4), 6(3)(a), (b), (c), 13(1) and Annexure I of the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (AML Regulations) read with Section 40A of the Securities and Exchange Commission of Pakistan Act 1997 (the Act).</u>
4. Action Taken	Key findings were reported in the following manner: I have examined the written and oral submissions of the Respondent. In this regard, I observe that: <ul style="list-style-type: none">i. With regard to the EDD of its clients, the Respondent provided documents pertaining to source of funds. The Respondent during the hearing provided that they had performed EDD of its clients but the documents could not be provided at the time of inspection due to certain limitations. Further, the Respondent during the hearing also agreed that the risk categorization of 6 clients was later changed to high-risk subsequent to the observation by the inspection team. The Respondent further submitted that these clients were not in contact due to which such information could not be obtained whereas, two client accounts did not have funds/ securities. In view of the arguments submitted by the Respondent and the documents on record reveal that such information was not readily available at the time of inspection and delay was observed on part of the Respondent to furnish documents

to the inspection team. Further, the risk rating with respect to the 6 clients was only changed subsequent to the observation highlighted by the inspection team. Therefore, contravention of regulation 9(3) and 9(4) is established with regard to the instances as identified in the SCN.

- ii. With regard to the deficiencies in its AML/CFT policy, the Respondent during the hearing provided that the it has subsequently rectified the policy/ procedures in line with the requirements of the AML Regulations and observations as highlighted by the inspection team. Moreover, the policy and procedures have also been updated with regard to the identification of Afghan Refugees. During the inspection, such clauses with regard to the procedures and controls of the highlighted areas were missing due to which contravention of regulation 4(a) has been established against the Respondent. Further, the compliance officer had failed to identify the deficiencies with regard to the highlighted areas and was therefore, found in contravention of regulation 18(c)(iii) of the AMI. Regulations.
- iii. With regard to the evidence of periodic screening of its client, it was observed that the Respondent could not provide evidence during the inspection as also provided during the hearing proceedings. Further, with regard to documentary evidence in respect of I corporate clients, the Respondent during the hearing provided that the record was missing during the inspection and was provided later in response to the SCN. With regard to non-maintenance of relevant documentary evidence in respect of KYC/CDD of its clients and screening against proscribed persons/entities, the Respondent has contravened the provisions of regulation 15(3) of the AML Regulations.
- iv. With regard to the NADRA Verisys of its clients, their nominees, authorized persons and directors, the Respondent provided that it was not available at the time of inspection. However, subsequent to the inspection, the Respondent has performed Verisys through third party services.
- v. With regard to the KYC/CDD of 4 clients as highlighted in the SCN, it was observed that the Respondent could not provide KYC/CDD checklist of 3 clients during the

inspection. The Respondent during the hearing provided that the documents were not provided due to limitation of time. However, the argument put forth by the Respondent is not tenable as AML Regulations have been effective since June, 2018 and the inspection was carried out for the period starting from July, 2020 i.e. after 2 years of promulgation of AML Regulations. The documentation with respect to KYC/CDD and risk categorization form the preliminary requirements of AML Regulations which should be maintained and readily available for on-going monitoring of its clients to ensure that the transactions conducted are being consistent with the regulated person knowledge of the customer. The Respondent was provided fair opportunity to produce such documents before the inspection team and still could not be provided in response to the LOF. The Respondent provided KYC/CDD checklists and documents pertaining to evidence of income/ funds in response to the SCN however, the date of acquisition of such documents could not ascertained from the documents and whereas, no date was mentioned on the KYC/CDD checklists. The Respondent was therefore,

vi. With regard to the ongoing monitoring of 2 of its clients, the Respondent had provided income tax returns for last 3 years as evidence of source of income/ funds, however, it was observed that the same could not be provided during the inspection team and was acquired at a later date. The Respondent had failed to produce evidence with regard to the source of income/ funds of the clients during the inspection. In view of the missing documentation, the Respondent could not demonstrate an appropriate mechanism for on-going monitoring of its clients. The Respondent was therefore, found in contravention of regulation 13(1) of the AML Regulations.

vii. With regard to the missing information regarding KYC/CDD of one client, the Respondent had provided recent salary certificate of the client and also provided KYC/CDD checklist. I however, during the inspection, such documentation was not available and provision of evidences in response to the SCN does not maintain that the information pertaining to client was readily available with the Respondent. Further, the inspection team also observed that relevant information on KYC/CDD checklist such as date, account titles, and UIN number

	<p>was also missing. Therefore, the Respondent was found to be in contravention of regulation 6(3)(a), 6(3)(c) and 6(4) read with Annexure I (Note ii) of the AML Regulations.</p> <p>Therefore, in terms of powers conferred under section 40A of the Act, a penalty of Rs.700,000/- (Rupees Seven Hundred Thousand Only) is hereby imposed on the Respondent. The Respondent is directed to deposit the aforesaid penalty in the account of the Commission being maintained in the designated branches of MCB Bank Limited within 30 days of date this Order and furnish the original deposit challan to this Office. Further, the compliance officer of the Respondent is strictly advised to ensure that its AML/CFT policy is being updated in a timely manner as per the requirements of the AML Regulations</p>
5. Penalty Imposed	Rs. 700,000/-
6. Current Status of Order	Penalty not deposited and Appeal has been filed by the respondents.