



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
SPECIALIZED COMPANIES DIVISION  
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT

**Before the Commissioner (SCD)**

**Show Cause Notice under Section 282J (1) read with Section 282M (1) of the Companies Ordinance, 1984 for Violations of, inter-alia, Regulation # 6 (2), (3) (4), (5), (8) & (11), Regulation # 9 (4) read with regulation # 9(3) and Regulation # 13(3) of the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018**

*Date of hearing:*

*May 20, 2019*

*Present (on behalf of Faysal Asset Management Limited)*

- i. Mr. Khaldoon Bin Lateef, CEO*
- ii. Mr. Muhammad Furqan, Head of Compliance*

*Assisting the Commissioner (SCD)*

- i. Ms. Bushra Aslam, Executive Director*
- ii. Ms. Tanzila Nisar Mirza, Additional Director*

**ORDER**

This Order shall dispose of proceedings against Faysal Asset Management Limited ("FAML", the "Company"), which is a public limited company licensed to undertake the business of Asset Management and Investment Advisory Services initiated through Show Cause Notice (the "SCN") bearing No. SCD/AMCW/ADJ/10/AMIML/276/2019 dated May 6, 2019 under Section 282J (1) read with Section 282M (1) of the Companies Ordinance, 1984 (the "Ordinance").

2. **AND WHEREAS**, a scope specific inspection of Faysal Asset Management was ordered under powers conferred upon Securities and Exchange Commission of Pakistan under Section 282I of the Companies Ordinance, 1984 vide inspection order bearing number SCD/S&ED/FAML/2018/261 dated December 21, 2018.

3. **AND WHEREAS**, the scope of the inspection extended to review and assess the level of compliance of the AMC with respect to the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 ("AML and CFT Regulations, 2018"). However, during the course of inspection, various violations/non-compliances were observed. The inspection team highlighted several deficiencies in the customers' record / documentation (selected on sample basis) which were in violation of several provisions of AML and CFT Regulations, 2018.

4. **AND WHEREAS**, the Company was called upon to show cause in writing as to why penal action should not be taken against the Company, under section 282J (1) read with Section 282M

(1) of the Ordinance for violations of, inter-alia, Regulation 6 (2), (3) (4), (5), (8) & (11), Regulation 9(4) read with regulation 9(3) and Regulation 13(3) of AML and CFT Regulations, 2018.

5. **AND WHEREAS** a written reply was received vide letter dated May 14, 2019 from the Company, wherein the contentions made in the SCN were categorically addressed. The following arguments were provided in the reply;

- i. Contents of para 5(i) with respect to non-verification of CNICs of the investors, it was submitted that the unit holder registrar function of FAML had been outsourced. Technology Trade (Private) Limited (TTPL) was registrar of FAML Funds till 14 May 2018 and was performing verification of CNIC from NADRA VERISYS. However, due to cessation of services by TTPL, effective 15 May 2018, JWAFS Registrar Services (Pvt.) Limited (JWAFS) had been appointed to provide registrar services to FAML Funds. During shifting of documents from TTPL to JWAFS verification evidence for CNIC's was misplaced. Nevertheless, the verification of CNICs for the investors was performed in the month of January 2019. Further, the management submitted that FAML had requested the investors to provide valid CNICs copies vide letter dated February 06, 2019 and reminder letter dated March 22, 2019. The Customer Services in this regard through email and / or telephone call also followed up with the investors. After receipt of valid CNICs from the remaining investors, NADRA Verisys will be conducted and same will be shared with the Commission.
- ii. Para 5(ii), regarding non-approval from senior management, in case of high-risk customers, FAML submitted that vide letter dated February 25, 2019 to the Commission, it had confirmed that approval from senior management had been obtained for six investors. The management further informed that FAML had requested the investors to provide relevant documents vide letter dated February 06, 2019 and reminder letter dated March 22, 2019. The investors were being followed up by the customer services in this regard through email and/or telephone call.
- iii. Para 5(iii), regarding absence of mandatory documents and non-compliance of Regulation 6 (2) of AML & CFT Regulations, FAML submitted that vide letter dated February 25, 2019 to the Commission it had confirmed that FAML had requested the investors to provide relevant / mandatory documents vide letter dated February 06, 2019. The investors were also followed up by Customer Services through email and / or telephone call. Further, FAML had also sent reminder letters dated March 22, 2019 to the investors for submission of relevant mandatory document. After receipt of relevant / mandatory documents from the investors, same will be shared with the Commission.
- iv. Para 5(iv) regarding expired CNICs of the trustees and non-compliance of Regulation 6 (4) and 6(11) of AML & CFT Regulations, FAML submitted that vide letter dated February 25, 2019, it had informed the Commission that FAML had requested the investors to provide relevant / mandatory documents vide letter dated February 06, 2019. The Customer Services, in this regard through email and / or telephone call, also followed up with the investors. Further, FAML has also sent

reminder letters dated March 22, 2019 to the investors for the submission of relevant mandatory documents. After receipt of relevant / mandatory documents from the investors, same will be shared with the Commission.

- v. Para 5(v), regarding non-compliance of Regulation 6 (5) of AML & CFT Regulations stipulating verification of identity of customers and beneficial owners, the management informed that it had started ongoing monitoring of investors on the basis of KYC.
- vi. Para 5(vi), regarding non-compliance of Regulation 6 (8) of AML & CFT Regulations, the management informed that the AML policy of Company along with the approval of the Board of Directors had been submitted to the Commission via email dated February 21, 2019. Since its approval, FAML has been following the risk categorization requirement in letter and spirit. Similarly, in respect of non-compliance of Regulation 9 (4) read with Regulation 9(3) with regards to inadequate Enhanced Due Diligence (EDD) of investors, the management had informed the Commission in their letter dated February 25, 2019 that it had requested the investors to provide relevant / mandatory documents vide letter dated February 06, 2019. The Customer Services also followed up with the investors through email and / or telephone call. Further, FAML had also sent reminder letters dated March 22, 2019 to the investors for the submission of relevant mandatory documents. After receipt of relevant / mandatory documents from the investors, same will be shared with the Commission.
- vii. Para 5(vii), wherein it is mentioned that identity of customers and beneficial owners had not been verified resulting in non-compliance of Regulation 13 (3) of AML & CFT Regulations, the management informed that the company had started ongoing monitoring for the KYC of investors.
- viii. In addition, the management informed that it had decided to send second reminders on May 23, 2019 to those investors who have not furnished their KYC documents. Investors will be apprised that due to non-submission of requisite documents within fifteen days of the reminder, FAML will consider termination of business relationship by issuing cheque for remaining balance amount in the name of the account holder under the requirement of Regulation 6 (11) of AML & CFT Regulations, 2018.

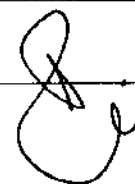
Along with the said reply, the mandatory requisite documents obtained from various investors, as indicated by the inspection team, were also submitted.

The hearing in the matter took place on May 20, 2019 wherein Mr. Khaldoon Bin Latif, Chief Executive Officer and Mr. Muhammad Furqan, Head of Compliance appeared on behalf of the Company before the Commissioner (SCD). They reiterated the facts stated in the written reply. The Respondents further submitted that FAML was in a transition phase since the management was changing hands. During the process of change of management, the employees seemed to have not performed their responsibilities diligently due to which noncompliance of the regulations took place.

**6. Relevant Provisions of Law:**

The Company has prima facie violated Regulation 6 (2), (3), (4), (5), (8) and (11), Regulation 9 (4) read with regulation 9 (3) and Regulation 13 (3) of AML and CFT Regulations 2018.

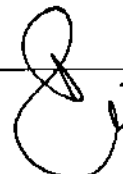
S. No.	Relevant Provision of Law
i.	<b>Regulation # 6 (2) of AML and CFT Regulations 2018</b> states " <i>regulated person shall apply CDD measures when establishing business relationship with a customer and when there is doubt about the veracity or adequacy of previously obtained customer identification data</i> "
ii.	<b>Regulation # 6 (3) of AML and CFT Regulations 2018</b> states " <i>customer due diligence (CDD) in broader term include</i>  <i>a. identifying the customer or beneficial owner and verifying the customer's/beneficial owner's identity on the basis of documents, data or information obtained from customer and/or from reliable and independent sources;</i>  <i>b. understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship; and</i>  <i>c. monitoring of accounts/transactions on ongoing basis to ensure that the transactions being conducted are consistent with the regulated person knowledge of the customer, the customer's business and risk profile, including, the source of funds and, updating records and data/ information to take prompt action when there is material departure from usual and expected activity through regular matching with information already available with regulated person.</i> "
iii.	<b>Regulation # 6 (4) of AML and CFT Regulations 2018</b> states that " <i>regulated person shall obtain such documents from different types of customers as provided in Annexure-I.</i> "
iv.	<b>Regulation # 6 (5) of AML and CFT Regulations 2018</b> states " <i>Regulated person should verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or may complete verification after the establishment of the business relationship, provided that-</i> <i>(a) this occurs as soon as reasonably practicable;</i> <i>(b) this does not interrupt the normal conduct of business; and</i> <i>(c) the ML/TF risks are effectively managed</i> "
v.	<b>Regulation # 6 (8) of AML and CFT Regulations 2018</b> states " <i>each customer shall be categorized as high or low risk, depending upon the outcome of the CDD process</i> ".
vi.	<b>Regulation # 6 (11) of AML and CFT Regulations 2018</b> states " <i>where regulated person are not able to satisfactorily complete required CDD measures, account shall not be opened or existing business relationship shall be terminated and consideration shall be given if the circumstances are suspicious so as to warrant the filing of an STR in relation to the customer.</i> "



vii.	<p><b>Regulation # 9 (4) read with regulation 9 (3) of AML and CFT Regulations 2018 states</b> " Regulated person shall perform EDD proportionate to risk posed to the business relationship by the customers that are identified as high risk or are notified as such by the Commission;</p> <p><i>EDD measures include but are not limited to the following;</i></p> <p>a) <i>obtain approval from regulated person senior management to establish or continue business relations with such customers;</i></p> <p>b) <i>establish, by appropriate means, the sources of wealth and/or funds or beneficial ownership of funds, as appropriate; including regulated person' own assessment to this effect; and</i></p> <p>c) <i>conduct during the course of business relations, enhanced monitoring of business relations with the customer.</i></p>
viii.	<p><b>Regulation # 13 (3) of AML and CFT Regulations states</b> "regulated person shall periodically review the adequacy of customer information obtained in respect of customers and beneficial owners and ensure that the information is kept up to date and relevant by undertaking reviews of the existing records, particularly for higher risk categories of customers and the review period and procedures thereof should be defined by regulated person in their AML/CFT policies, as per risk based approach."</p>

7. I have examined the facts of the case, considered the written responses submitted along with documentary evidences placed on record and the arguments put forth by the Respondent Company. I am of the view that the arguments submitted by FAMI. are not tenable on the following grounds:

- i. FAML is responsible for the acts and omissions of all persons to whom it may delegate any of its functions as manager as if they were its own acts and omissions. Hence, the agents' failings tantamount to the failings of FAML. Moreover, it has been observed that it took FAML six months, after the verification evidence for CNICs was misplaced, to request the investors to provide valid CNIC copies. This should have been done immediately once it was confirmed that evidence for CNICs was not recoverable. It has also been noted that the verification of customer CNICs was initiated after the observation of non-verification by the inspection team was made. A six-month delay indicates weakness in responsiveness of the management. Even to date, FAML has not been able to complete the verification process via the NADRA Verisys, since the customers have not provided their CNICs, despite reminder letters and telephonic follow up.
- ii. FAML initiated the process of approval from senior management, in case of high-risk customers after the observation was made by the inspection team. FAML should not only have been vigilant in opening high-risk customer accounts but should also have marked these accounts as high risk in their systems as soon as these were opened. A more disciplined approach should have been adopted while managing high-risk customer accounts. The absence of such a practice indicates the weakness of processes in place at FAMI.



- iii. From the findings of the inspection report, it is obvious that due diligence was not being exercised while opening accounts, as a result of which many requisite mandatory documents were not present in the investors records. Moreover, the process of obtaining mandatory documents was initiated after the inspection team raised the observation. The deficiencies in the records in terms of mandatory documents, raises questions in terms of the effectiveness of the compliance function or internal audit department.
- iv. The presence of expired CNICs and incomplete documents reflects that the investor files/documents were not being reviewed periodically, in order to update the documents that had expired. Moreover, in the follow up letters to the investors, no deadlines have been given for submission of the requisite documents by the investors. This leads me to believe that there are significant weaknesses in the compliance function.
- v. No argument has been furnished for non-compliance of Regulation 6 (5) of AML & CFT Regulations, 2018 with respect to verification of identity of customers and beneficial owners. The Company has submitted that the process of monitoring customers on the basis of KYC has been initiated. It is surprising to observe that even six months after the issuance of AML and CFT Regulations, 2018 (i.e. issued in June 2018), FAML had not initiated the process of verifying customers/beneficial owners identity. The AML and CFT Regulations, 2018 were effective immediately after their issuance and warranted that FAML initiate the process at its earliest. Furthermore, no details have been provided as to what the current monitoring process entails and what steps have been taken to improve it. In my opinion, starting the ongoing monitoring with regards to KYC of investors, upon being indicated by the inspection team, reflects the weakness of systems and processes at FAML.
- vi. Argument in respect to delay in preparation of the AML policy of FAML is not tenable. AML policy of the AMC should have been prepared and approved by the BOD, shortly after the issuance of AML and CFT Regulations, 2018. Moreover, as warranted by the AML and CFT Regulations 2018, the EDD process should have been conducted by FAML at the very time of opening investor accounts. In my view, the EDD process should have actually been embedded in the account opening procedure. Oversight of such an important requirement by the management and the dealing officers indicates that the staff were not adequately trained to comprehend the importance and need to conduct the EDD process adequately.
- vii. Argument provided in respect of lack of verification of identity of customers and beneficial owners thereby resulting in non-compliance of Regulation 13 (3) of AML & CFT Regulations, is not plausible. The AML and CFT Regulations, 2018 were effective immediately after their issuance and warranted that FAML initiate the process of verification of customers /beneficial owners, at its earliest. Failure to do so reveals that FAML was not implementing the AML and CFT Regulations in their letter and spirit, thus exhibiting weakness on part of the management of FAML.

8. It is hence concluded, that the arguments provided by FAML are not plausible due to the reasons mentioned above. The AMC is responsible for the acts and omission of all persons whom

it may delegate any of its functions. Therefore, the laxity shown by the employees in performing their responsibilities is in fact the failing of the Company.

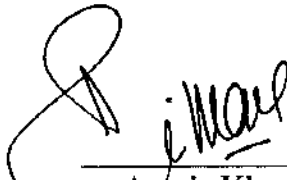
In its reply to the Show cause notice, FAML has continuously reiterated that the investors are being constantly requested and being followed up for submission of the requisite documents, which after receipt will be shared with the Commission. This, in my view indicates a relaxed approach of the Company since no timelines have been provided to the investors for the submission of the documents, as a result of which the completion of the documentation/record may be delayed further. It appears that the company fails to realize that the requirement is to obtain the documents in an expeditious manner and not to just request them. The mechanics as well as the spirit is missing to comply with the applicable regulations.

It is my opinion, FAML needs to take cognizance of how to improve and strengthen its operational procedures and systems. FAML is required to ensure comprehensive training programs for its staff and take strict disciplinary action, if need be, against those who are found to act contrary to the applicable regulatory framework. FAML needs to improve its systems by automating them and providing inbuilt checks in the systems, that can generate alerts. Moreover, FAML is required to focus on the review and monitoring on a continuous basis. Above all FAML must ensure strict compliance with the applicable regulatory framework in future.

9. Based on my observation at para 7 and 8 above, I am of the considered view that leniency on non-compliance towards requirement of AML and CFT Regulation 6(2), (3), (4), (5), (8) and (11), Regulation 9(4) read with regulation 9(3) and Regulation 13(3) is not possible since SECP is responsible for ensuring implementation and enforcement of the applicable regulatory framework by the entities that fall under its regulatory ambit. Therefore, I hereby conclude the proceedings initiated under section 282J(1) read with section 282M(1) of the Companies Ordinance, 1984 by imposing an aggregate fine of Rs.200,000 (Rupees two hundred thousand only) on the Respondent.

10. The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited in the name of SECP within seven days from the receipt of the order and furnish receipted bank challan to SECP. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears will be initiated.

11. This order is being issued without prejudice to any other action that the Commission may initiate against the Company in accordance with the law on matter subsequently investigated or otherwise brought to the knowledge of the Commission.

  
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**Aamir Khan**  
(Commissioner SCD)

**Announced on:**  
**May 30, 2019 at Islamabad**