



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
(ADJUDICATION)**

Before the Commissioner (SCD)

In the matter of Show Cause Notice under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 for violations of, inter-alia, Regulation 6(3), 6(5a), 6(8), 7(1)(b), 9(4)(b), 13(3) of AML and CFT Regulations 2018

Date of hearing:

September 3, 2019

Present (on behalf of National Investment Trust Limited)

- i. Mr. Adnan Afridi, CEO*
- ii. Mr. Faisal Aslam, 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 off proceedings against National Investment Trust Limited (“NITL”, the “Company”), which is a public limited company licensed to undertake the business of Asset Management initiated through Show Cause Notice (the “SCN”) bearing No SCD/AMCW/ADJ/37/2019/18 under section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 for violations of inter-alia, Regulation 6(3), 6(5a), 6(8), 7(1)(b), 9(4)(b), 13(3) of the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (hereinafter referred to as the AML and CFT Regulations).

2. **AND WHEREAS**, a scope specific inspection of NITL was ordered under powers conferred upon the Securities and Exchange Commission of Pakistan (SECP or the Commission) under Section 282I of the Companies Ordinance, 1984 vide inspection order bearing number SCD/S&ED-IW/NITL/2019/101 dated March 28, 2019.

3. **AND WHEREAS**, the scope of the inspection extended to review and assess the level of compliance of the AMC with respect to the AML and CFT Regulations. 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.

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 for violations of, inter-alia, Regulations 6(3), 6(5a), 6(8), 7(1)(b), 9(4)(b), 13(3) of AML and CFT Regulations.

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

- i. With respect to contents of para 3(i) of the SCN, regarding the Company's information system, NITL elaborated the mechanism being followed to ensure compliance with the requirements of S.R.O. 245(I)/2019 dated February 22, 2019. The SRO stipulates that all Regulated Persons have to conduct self-risk assessment, have appropriate mechanisms to provide the risk assessment information to the Commission, and ensure implementation of targeted financial sanctions under the United Nation Security Council Resolutions, adopted by the Government of Pakistan, and refrain from forming business relationship with proscribed persons and entities under the Anti-Terrorism Act, 1997 (XXVII of 1997) and related matter.

The mechanism being adopted by NITL, in this regard includes the following;

- a) The Sanction List (UNSC/NACTA) is being updated on pre-defined time intervals in the NIT's Unit Management System through in-house developed interface.
- b) The screening of existing clients (Individual(s) as well as Legal Person(s)) is being carried out through various inbuilt filtering criteria, which include;
 - Name, including first name, second name, alias, and father's name
 - Identification documents such as CNIC or Passport
 - Address, including City, Country
 - Date of Birth
 - For Legal Person the system also verifies the information of signatories/ trustees/ directors/ shareholders / beneficial owners/ governing bodies' members etc.
- c) In case of any positive match of existing clients, against the laid-out screening criteria the user has the option to block such a client, hence freezing any option to perform transactions.
- d) For new account opening, similar screening protocol is being followed, whereby the system prompts any positive match thereon freezing the option of opening the account. The person is further earmarked, blocked and reported to the relevant authorities.

NITL further communicated that previously the screening of information related to Legal Persons' directors/ shareholders/ beneficial owners/ governing bodies' members was being performed manually at the time of account opening and

periodically also. However, in order to bring efficiency, this process has now been automated.

- ii. With respect to contents of para 3(ii) of the SCN, highlighting absence of ongoing monitoring of existing customers, NITL contended that it was the pioneer of domestic mutual fund industry having many legacy accounts in its record, which belonged to the era where documentation requirement was relatively less from the existing one. Hence, in some cases, extra time was likely to be required to obtain documentation from the unit holders to bring the record up to the current requirements. NITL claimed that the number of their institutional clients as on June 30, 2019, was 1,044. Out of these 1,044 accounts, 728 of them were opened before April 28, 2009, the date when the initial circular related to KYC was disseminated by SECP. NITL further mentioned that only 139 accounts out of these 728 were active. Remaining 589 account holders had not conducted any transactions in their accounts since April 2009 and any subsequent transactions in these accounts shall be subject to fulfillment of required documentation formalities. NITL also informed that documentation of 93 accounts out of 139 active accounts had been completed as per the existing requirements, while for the remaining accounts, branch managers were continuously reaching out to the clients by sending letters and approaching them in person. NITL declared that it was targeting the end of this calendar year to complete the documentation shortfall of the remaining active clients.

Regarding ongoing monitoring/review of existing client base, NITL asserted that the Company was periodically reviewing and upgrading the existing documentation gaps of the legacy accounts. To further enhance and expedite the scrutiny process, NITL informed that it was in the process of hiring dedicated resources in every zone.

- iii. With respect to contents of para 3(iii) of the SCN, NITL claimed that being in the asset management business since 1962, it had a pool of approximately 55,000 investors out of which many of them were categorized as legacy accounts and belonged to the era where documentation requirements were completely different from the requirements that exist today. The requirement for maintaining/identifying beneficial ownership was highlighted for implementation in AML and CFT Regulations and since then NITL has complied with the requirements to the extent of 40%, in case of its active accounts. NITL further declared that the process had been further accelerated by sending out reminders to the clients, and by using its Call Center for follow ups. NITL was of the view that post December 31, 2019 any further activity in these accounts shall be restricted to fulfillment of required information.
- iv. With respect to Point 3 (iv) of the SCN related to the observation that NITL was not categorizing its customers according to their risk profiles, NITL contended that the major chunk of existing investors where risk categorization had not been done, belonged to the below mentioned client categories:

a) Unit Holders without CNICs:

This category of Unit Holders belonged to old regulatory regime where there were no requirements of obtaining identification documents from investors. This figure was around 29,221 investors as on December 31, 2012 which through persistent efforts including approaching investors through advertisements in print media, personal visits, calls, letters etc., was reduced to 19,426 as on June 30, 2019. NITL further communicated that the investors were not allowed any transactions in these accounts unless they fulfill the required documentations.

b) Legacy/inactive account:

NITL reiterated its concern regarding the legacy/ inactive accounts, which existed in its customer base. NITL stated that keeping in view the quantum of these accounts it had become tedious to obtain the relevant documentation because of various reasons, inaccessibility being a major factor. However, NITL assured that it was trying its level best to not only develop connectivity with the said clients, but also ensure that their documents are as close as possible to the existing requirements of the AML and CFT Regulations. NITL further acknowledged the fact that risk categorization of the aforementioned categories of investors was not practically possible unless the required documents/information was completely retrieved.

6. The hearing in the matter took place on September 3, 2019 wherein Mr. Adnan Afridi, CEO and Mr. Faisal Aslam, Head of Compliance appeared on behalf of the Company. They reiterated the assertions contained in their written reply dated August 5, 2019. The Respondents submitted that they fully realized that the company was not completely compliant with the AML and CFT Regulations but it was largely due to reasons beyond their control. The legacy accounts constituted a major portion of the customer base of NITL and mainly consisted of bearer certificate investments, which could not be forcefully changed into registered accounts. Moreover, the wealth in the legacy accounts could not be traced to anyone due to absence of identification documentation. In addition to legacy accounts a major chunk of accounts existed which belonged to the old regulatory regime where there were no requirements of obtaining identification documents from investors. Consequently, identification documents of such customers in the company record do not exist. The CEO assured that no further transactions in these accounts were allowed to the investors unless they fulfill the required documentation.

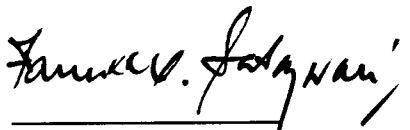
7. The CEO emphasized that due to the burden of legacy accounts and accounts without CNICs that NITL was carrying, it was lagging behind as far as compliance with the AML and CFT Regulations was concerned. The CEO assured that it was not intentional rather NITL was facing a major challenge and even though it was trying to reduce the number of such accounts, it was completely dependent on the account holders to approach NITL. The CEO also asserted that since his joining in February 2019, efforts were being made at a faster pace and he was trying his best

to improve the compliance function. In this regard, efforts to automate the unit management system of NITL had been completed in May 2019. Furthermore, the compliance function had been beefed up with additional resources, exclusively for ensuring that requisite documents were obtained to verify the identity of the customer and the beneficial owners.

8. I have analyzed the facts of the case, considered the documentary evidence placed on record, along with the arguments put forth by the Respondent Company. I am of the view that the submissions by NITL are plausible. Regulation 6(10) of AML and CFT Regulations states "*regulated person are required to apply CDD requirement to its existing customers on the basis of materiality and risk and should conduct due diligence on existing relations at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained;*". NITL has frozen all non-compliant accounts which means that any transaction cannot take place without complying with the AML/CFT requirements. In view thereof, these are not material and carry no risk. I have also taken into consideration the work in progress for overhaul of the AML/CFT compliance framework, submitted by NITL specifically on how to improve and strengthen its operational procedures and systems and automation of systems. Nevertheless, NITL is hereby directed to provide a time bound plan by September 30, 2019, whereby it should provide a roadmap for ensuring complete compliance with the AML and CFT regulatory framework.

9. Based on my observation at paras 7 and 8 above, I am of the considered view that the Company is constrained by challenges of legacy accounts and is dependent on account holders to approach the AMC to fulfil the documentation requirement. Therefore, taking a lenient view, I am not imposing a penalty this time. However, the AMC is required to ensure compliance with the AML/CFT regulatory framework in letter and spirit. Any future violations or non-compliance of the AML/CFT Regulations would be viewed extremely seriously and shall be dealt with in accordance with the enforcement action(s) as provided in the law.

10. 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.


Farrukh H. Sabzwari
Commissioner (SCD)

Announced on:
September 6, 2019 at Islamabad.