



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)
Adjudication Department

Through Courier

File No. 1(59) SMD/ADJ/LHR/2018

October 29, 2018

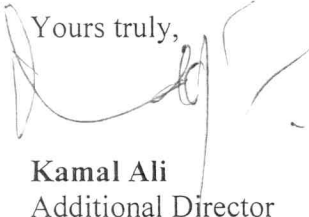
Backers & Partners (Pvt) Limited,
Through its Chief Executive officer,
Room No.309, PSX Building,
19-Khayaban-a-Aiwan-a-Iqbal,
Lahore

Subject: ORDER IN RESPECT OF SHOW CAUSE NOTICE DATED SEPTEMBER 3, 2018, BEARING NO. File No. 1(59) SMD/ADJ/LHR/2018

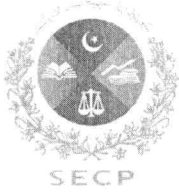
Dear Sir,

Please find enclosed herewith a copy of order in the title matter for your record and necessary action.

Yours truly,



Kamal Ali
Additional Director



Securities and Exchange Commission of Pakistan
Securities Market Division

Before the Commissioner (SMD)

In the matter of Show Cause Notice Issued to
Backers & Partners (Private) Limited

<i>Date of Hearing</i>	<i>September 24, 2018</i>
<i>Present at the Hearing</i>	<i>Ahsan Ahmed, Compliance Officer</i>
<i>Place of Hearing</i>	<i>Through Video Conference from Regional Office, Lahore</i>

ORDER

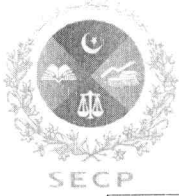
This Order shall dispose of the proceedings initiated through Show Cause Notice (SCN) bearing No. 1(59) SMD/ADJ/LHR/2018 dated September 03, 2018. The SCN was served on Backers & Partners (Private) Limited (“**Respondent**”) by the Securities and Exchange Commission of Pakistan (“**Commission**”) under section 150 of the Securities Act, 2015 (“**Securities Act**”). The Respondent is a Trading Rights Entitlement Certificate holder of the Pakistan Stock Exchange Limited (“**PSX**”) and licensed as a securities broker with the Commission under the Securities Act and the Securities Brokers (Licensing and Operations) Regulations, 2016 (“**Brokers Regulations**”).

2. Brief facts of the case leading to issuance of SCN are that the Commission vide order dated September 08, 2017, in exercise of the powers conferred under section 138 of the Securities Act, conducted inspection wherein a thematic review of compliance status of regulatory requirements relating to Anti Money Laundering (“**AML**”), Know Your Customer (“**KYC**”) and Customer Due Diligence (“**CDD**”) was carried out of the Respondent. The inspection report dated May 31, 2018 (“**Report**”) *inter alia* revealed the following:

- (i) It was observed that the KYC/CDD policy provided by the Respondent was approved in its Board of Director meeting held on July 29, 2016 however, the evidence provided by the Respondent for dissemination of the policy among its employee was signed by the employees on November 11, 2016. Further, following areas had not been covered under the KYC/CDD policy of the Respondent as required under regulatory framework:
 - a. Online customer
 - b. Ongoing training
 - c. Compliance function
 - d. High risk customer details not include online customer
- (ii) It was observed that, KYC/CDD/AML policy of the Respondent did not mention the Anti Money Laundering Act, 2010 and the Anti Money Laundering Regulations, 2015 for compliance as required under the KYC/CDD Guidelines of PSX.
- (iii) The Respondent had not documented the investment profiling of its customers as required under the KYC/CDD Guidelines of PSX based on customer’s identity, nature of income, source of funding, location/domicile of customer, etc. As per details submitted by the Respondent, information was missing in respect of the following:

Client	Account No.	Observation
Zafar Mehmood Khan	101	- Name and address of Business not given.





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		- Income not mentioned.
Gulzar Ahmed	107	- Address of Employer and designation not given. - Salary not mentioned.
Tahir Mahmood	275	Name and address of Business not given. - Income not mentioned.
Saqib Ahmad Khan	292	- Address of Employer not given. - Salary not mentioned.
M. Saqib Ijaz	105	- Occupation mentioned as student, source of income not identified.
M. Aman	262	- Name and address of Business not given. - Income not mentioned.
Farida Naveed	274	- Occupation mentioned as housewife, source of income not identified.
Rabia Usman	394	- Occupation mentioned as housewife, source of income not identified.

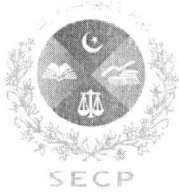
Further, details about customers' nature of investment as required under the KYC/CDD Guidelines of PSX have not been mentioned.

- (iv) Following instances were observed where client risk categorization by the Respondent was not as per the KYC/CDD Guidelines of PSX which illustrates that proper risk assessment had not been done based on the criteria prescribed:

S. #	COD E	CLIENT NAME	Type	Risk Categorization as per Respondent	Risk Categorization as per PSX Guidelines
1.	338	Chaudhary M. Usman	As per UIN Report he is a foreigner	Not provided	High
2.	353	Taha Bin Ali	As per UIN Report he is a foreigner	Not Provided	High
3.	373	Muhammad Shafqat	As per UIN Report he is a foreigner	Not Provided	High
4.	389	Asad Mahmood	As per UIN Report he is a foreigner	Not Provided	High

- (v) Online customers had not been classified as 'High Risk' customers as required under the KYC/CDD Guidelines of PSX.
- (vi) Due to the failure to properly categorize customers according to their risk profiles, it appeared that the Respondent did not apply Enhanced Due Diligence (EDD) when dealing with High Risk customers as required under the KYC/CDD Guidelines of PSX. The Respondent was asked to provide the list of customers categorized into high/medium/low risk as required under the KYC/CDD Guidelines of PSX, but the Respondent failed to furnish the same.
- (vii) While examining the Standardized Account Opening Forms (SAOF) of two customers of the Respondent, namely Syeda Raza (133) and Sabahat Kiran (312), no





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evidence was observed with regard to persons operating and managing their trading accounts, although occupation of both the customers is mentioned as 'Housewife'. The Respondent was also required to provide the evidence of order placement and sending trade confirmations to its customers for the following trades:

Syeda Raza		Code: 133	
Date	Scrip	Buy	Sell
25/07/17	ENGRO	1,000	
28/07/17	BOP	10,000	
31/07/17	ENGRO		500
21/08/17	BOP		5,000

Sabahat Kiran		Code: 312	
Date	Scrip	Buy	Sell
03/08/17	AZGARD	1,000	
10/08/17	ENGRO POLY		1,000

Rizwana Abrar		Code: 149	
Date	Scrip	Buy	Sell
05/07/17	CHAKWAL SPIN		25,000
15/08/17	CHAKWAL SPIN	91,500	

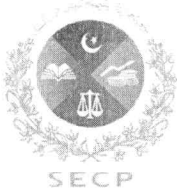
The Respondent provided the evidence regarding sending the trade confirmations to its customers but failed to provide the evidence regarding placement of orders of those customers.

- (viii) It was noted that the profiles of following customers did not match with their high trading volume during the months of July and August 2017 and the Respondent failed to maintain the source of funds of these customers. Review of client ledgers of the said customers for the period July 1, 2017 to August 31, 2017 revealed that these customers had traded above the defined threshold, prescribed in Circular 10 of 2017 issued by the Commission, in the months of July 2017 and Aug 2017:

Client Code	Client Name	Occupation	Risk Rating by Respondent	Source of Fund as per Respondent
445	Farrukh Akbar	Business	Not Provided	Not provided
287	Muhammad Shafiq	Business	Not Provided	Not provided
274	Farida Naveed	Housewife	Not Provided	Not provided
101	Zafar Mehmood Khan	Business	Not Provided	Not provided
121	Naeem Tahir Sheikh	Business	Not Provided	Not provided
200	Abrar Ul Hassan	Service	Not Provided	Not provided
129	Ahmed Naveed	Business	Not Provided	Not provided
280	Saima Naeem	Housewife	Not Provided	Not provided

- (ix) The Respondent was required to provide employee wise details of trainings attended by them during July 01, 2016 to September 30, 2017 to ascertain that the Respondent had provided trainings to its employees and agents to ensure that they understand their duties under KYC/CDD/AML and are able to perform those duties satisfactorily as required under the KYC/CDD Guidelines of PSX. However, the Respondent failed to provide the same. The Respondent was also asked to provide evidence of





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experience of persons relating to/and or responsible for AML/KYC/CDD however it failed to provide the same.

- (x) As per Circular 10 of 2017 issued by the Commission, brokers are required to maintain record of customers having trading above the prescribed threshold. While reviewing the trading data provided by NCCPL for the month of July and August 2017, it was noted that certain customers of the Respondent had crossed the minimum threshold as defined under the said Circular. However, the names of those customers were not included in the list provided by the Respondent for customers exceeding the threshold, which is as follows:

Name	Client Code	Month
Muhammad Shafiq	287	July 2017
Farida Naveed	274	July 2017
Zafar Mehmood Khan	101	July 2017
Naeem Tahir Sheikh	121	July 2017
Abrar Ul Hassan	200	July 2017
Farrukh Akbar	445	August 2017

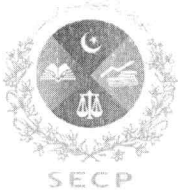
Further, the list provided by the Respondent for customers exceeding threshold included Ahmed Naveed (129) and Saima Naeem (280) both for the month of July 2017. It was observed that their risk category was not re-considered, Enhanced Due Diligence was not performed, and no other action was initiated.

- (xi) As per AML/KYC/CDD policy provided by the Respondent, the compliance officer is required to report to the Chief Financial Officer and Chief Executive Officer of the Respondent, contrary to requirements of the regulatory framework which require the compliance officer to be independent and report to the Board of Directors.
- (xii) In view of absence of customer identification, improper risk assessment and categorization of clients, absence of enhanced due diligence, absence of ongoing due diligence, lack of proper human resource in compliance function and absence of proper training, it appears that the Respondent does not have adequate checks and controls exist to monitor and remain alert regarding suspicious transactions.
- (xiii) The Respondent failed to provide the KYC forms of its following customers. Further, on examination of account opening and CDC Sub Account opening forms it was revealed that some columns on the forms are still blank.

3. It appeared from the foregoing that the Respondent *prima facie* acted in violation of regulations 16(1)(k), 16(1)(o) and 16(8) of the Brokers Regulations, Circular No. 10 of 2017 dated April 21, 2017 issued by the Commission, regulation 4.17 of the PSX Regulations and the Know Your Customer & Customer Due Diligence Guidelines issued by PSX on March 16, 2012.

4. The Commission took cognizance of the aforementioned alleged violations and served the SCN dated September 03, 2018 under section 150 of the Securities Act to the Respondent. The Respondent was called upon to Show Cause in writing within seven days from the date of receipt of the SCN and the case was scheduled for hearing before the undersigned on September 17, 2018. The Respondent filed written reply to the SCN vide letter of September 14, 2018. Hearing in the matter was rescheduled on request of the Respondent and held on September 24, 2018.



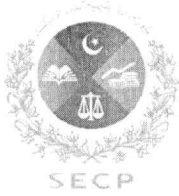


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5. The submissions made by the Respondent in response of the SCN and verbally during the course of hearing are summarized as under:

- (i) *In order to bring improvement in its own practices we already updated our KYC policy subsequent to the weaknesses highlighted in the letter of finding dated December 22, 2017 to address compliance function, ongoing trainings and AML Act/Regulations. The KYC policy was disseminated to employees on November 11, 2016 as the Compliance Officer was hired at the end of September 2016. PSX's KYC guidelines do not differentiate between online customers and other customers hence no such distinction has been made in the KYC Policy.*
- (ii) *The Investment profiling has properly been done and the customers' identity, nature of income/source of funding, location/ domicile are determined and documented at the time of account opening. The evidence of the source of the income is available in our record which is also attached herewith.*
- (iii) *That only a few accounts of non residents have opened at our brokerage house, which fall under the high risk category. No other type of high risk category account is opened at our brokerage house. Earlier the high and low risk clients were categorized on the basis of their resident status owing to software limitation as this feature is unavailable in the software. The list of the same was provided to the Commission and the same was already explained earlier. Moreover as a result of our request to the software vendor to include the feature in the back office system the software developer has already made necessary changes and has included this feature of classification based on high/medium/low risk categories.*
- (iv) *Online customers are not required by the KYC/CDD Guidelines of PSX to be categorized as high risk customers.*
- (v) *The high and low risk clients were categorized on the basis of their resident status owing to software limitation as this feature was unavailable in the software. Accordingly enhanced due diligence is applied on such customers.*
- (vi) *The orders of the customers mentioned in para 2(vii) are placed either through their own online trading login or the transactions are MFR transactions. Respondent stated that it hopes that online orders for accounts of Syeda Raza and Sabahat Kiran are being placed by themselves.*
- (vii) *Profiles of clients are in line with their trading activity and the source of funds of the said clients is maintained and is shown as occupation of the client. It also stated that other required information to establish source of funds of customers shall be completed.*
- (viii) *As a matter of practice at the time of joining the company, every newly appointed employee is given a lecture/briefing on the KYC/CDD policy of the company at the BNP. However if any new amendments or development takes place in the applicable regulatory framework the same is communicated to all of the employees along with an explanatory briefing. The Compliance Officer at the BNP has the skills and experience necessary for satisfactory performance of functions assigned. The compliance officer had been engaged with various brokers at Stock Exchange since 1993. His qualifications include MCom. and ICM certifications.*
- (ix) *The reports provided to the Inspection team for the compliance of the Circular 10 included two clients i.e. Client codes 280 and 129 who have traded above threshold level. Hence, the assertion that the reports provided in compliance of circular 10 do not include these two clients is inaccurate. That the only two clients have traded the*





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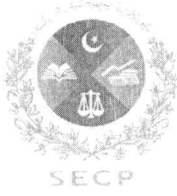
- above threshold level and in compliance of the circular 10 the record for the same has been maintained and has already been provided to the commission.*
- (x) *Necessary amendments with respect to reporting of the Compliance officer to Board of Directors instead of Chief Executive Officer in the KYC are made in order to bring it closer to the KYC Guidelines.*
- (xi) *BNP has reasonable checks and controls exists to monitor and report suspicious transactions.*
- (xii) *We submit that we have already further strengthened few weaker areas, hence we request Commission to take lenient view in this respect.*

6. I have heard the arguments presented by Representative of the Respondent during the hearing. Additionally, I have perused the available record, existing regulatory framework and written response filed by the Respondent. The primary allegation against the Respondent is that it acted in non-compliance with provisions of the relevant laws mentioned in para 3 above.

7. In order to arrive at a decision, it is essential to consider that:

- (i) the KYC/CDD Guidelines of PSX in section 4.1(viii) require online customers to be categorized as High Risk, a treatment which is different from other customers, contrary to the argument made by the Respondent. This requirement is also required to be covered in the Respondent's KYC/CDD policy;
- (ii) in response to 2(iii) above, while the Respondent has furnished certain information, it has failed to provide details relating to nature of investment of its customers which is required under section 3.6 and 3.7 of the KYC/CDD Guidelines of PSX;
- (iii) the Respondent has accepted that due to limitations in its software it was not able to categorize non-resident customers as High Risk and now its software has been updated;
- (iv) considering that the Respondent had not accurately categorized its customers due to software limitations and its lack of understanding regarding online customers, it could not have been possible for it to perform Enhanced Due Diligence of such customers;
- (v) with reference to para 5(vii), occupation of customers is not sufficient to establish source of funds, particularly when the occupation of customer is being mentioned as spouse, business, agriculturalist etc. with no other documentary evidence. In order to perform appropriate KYC/CDD of any customer, it is essential to establish the source of funds, i.e. where the funds in question originated from, and adequate documentation is maintained by the Respondent as evidence for the same;
- (vi) Respondent has not furnished any evidence against the allegation that for customers namely Ahmed Naveed and Saima Naeem, who crossed the threshold under Circular 10 of 2017, their risk category was not re-considered, Enhanced Due Diligence was not performed, and no other action was initiated;
- (vii) no evidence of on-going trainings of its employees relating to KYC/CDD was furnished by the Respondent. It must be understood that training of employees is an on-going process and section 11 of the KYC/CDD Guidelines of PSX requires that there has to be on-going training of brokers, their employees and agents to ensure that they understand their duties under KYC/CDD and are able to perform those duties satisfactorily; and
- (viii) Respondent has accepted and accordingly amended its KYC/CDD policy to rectify the reporting requirement for compliance officer.





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8. Before arriving at a decision, it is pertinent to mention that regulatory requirements relating to KYC/CDD and AML have been implemented since the year 2012 considering the public interest, integrity of the Pakistani capital market and the country's international commitments. Hence, all licensed persons are expected to ensure strict compliance with this regime by remaining vigilant and putting in place requisite policies and procedures to curtail activities relating to money laundering and financing of terrorism. The Commission has adopted a zero tolerance policy towards any gaps in this area and will not show any leniency for non-compliances in future.

9. Based on the above and the fact that the Respondent has accepted certain non-compliances in its response and during the course of the hearing, most of which have been rectified, I have reasons to conclude that it is established that the Respondent was guilty of misconduct in terms of section 150(5) of the Securities Act, as the Respondent is non-compliant with provisions of relevant laws mentioned in para 3 above.

10. In view of the foregoing, violations of the regulatory framework committed by the Respondent are established. However, it was observed based on the response and during the course of the hearing that the Respondent did not have complete understanding of the regulatory framework. While ignorance of law is not an excuse as the regulatory framework has been in effect since the year 2012, since the thematic review of the Respondent for AML, KYC and CDD has been carried out for the first time, I have decided to take a lenient view. Considering the same, no monetary penalty is being imposed, however, the Respondent is strictly warned to ensure compliance with the relevant legal framework.

11. Furthermore, the Commission will carry out a follow-up review within due course of time to assess whether the aforementioned violations have been rectified by the Respondent and in case of continued non-compliance, the Commission shall adopt a stringent course of action.

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



(Shaukat Hussain)
Commissioner

Announced on October 29, 2018
Islamabad.