



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

Through Courier

File No. 1(133) SMD/ADJ/KHI/2018

October 29, 2018

BMA Capital Management Limited

Through its Chief Executive officer,
801, 8th Floor, Uni Tower,
I. I. Chundrigar Road,
Karachi

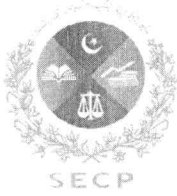
Subject: ORDER IN RESPECT OF SHOW CAUSE NOTICE DATED SEPTEMBER 13, 2018, BEARING NO. File No. 1(133) SMD/ADJ/KHI/2018

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
BMA Capital Management Limited

<i>Date of Hearing</i>	<i>October 05, 2018</i>
<i>Present at the Hearing</i>	<i>Nadir Rahman, CEO</i> <i>Imtiaz Ahmed, CFO</i> <i>Jawad Bhatti, Compliance</i> <i>Tahir Iqbal, Operations</i>
<i>Place of Hearing</i>	<i>Through Video Conference from Regional Office,</i> <i>Karachi</i>

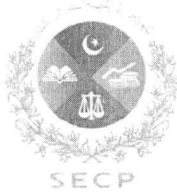
ORDER

This Order shall dispose of the proceedings initiated through Show Cause Notice (SCN) bearing No. 1(133) SMD/ADJ/KHI/2018 dated September 13, 2018. The SCN was served on BMA Capital Management 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 13, 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 09, 2018 (“**Report**”) *inter alia* revealed the following:

- (i) It was observed that the KYC/CDD/AML policy of the Respondent did not cover the aspect of maintenance and reporting of Currency Transaction Report (CTR), as required under the KYC/CDD Guidelines of PSX read with the Anti Money Laundering Act, 2010 and Anti Money Laundering Regulations, 2015. Regulation 5 of the AML Regulations, 2015 requires to file CTR when a broker undertakes a cash base transaction involving, payment, receipt or transfer of an amount exceeding the threshold i.e. rupees two million. This requirement had not been specifically been incorporated in the Respondent’s policy.
- (ii) The Respondent had not documented investment profiling of the following 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.:
 - a. Memoona Tanveer (Client code 08275): Mentioned as housewife as per Respondent however, as per CDC setup report of the said client her occupation is marked as “business”. Further, the client has crossed the minimum trading threshold in the month of August-17 as prescribed in Circular 10 of 2017 issued by the SECP and no evidence is provided for Enhanced Due Diligence of the





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customer. In CDC sub account opening form name of business is appearing as "GTN Fabrics (Private) Limited" and her designation is appearing as director, however, no evidence is attached. Further, the attached KYC/CDD Checklist form is not filled properly and risk assessment has not been documented through KYC form.

- b. Sabrina Dawood: In the KYC form source of fund invested in stock market has been mentioned as "Dividend" and has been marked as "loaned/borrowed" however, no evidence is attached. Furthermore, the attached KYC/CDD Checklist form is not filled properly and risk assessment has not been documented through KYC form. The Respondent has stated that the customer belongs to a well-known business family.
- c. Salma Batool: The KYC/CDD Checklist attached with account opening form is not filled properly and risk assessment has not been documented through KYC form.
- d. Najma (Client code 08194): The KYC/CDD Checklist attached with account opening form is not filled properly and risk assessment has not been documented through KYC form. KYC/CDD checklist relating to joint account holders not carried out. Thus, customer due diligence has not been carried out in respect of account holders.
- (iii) It was observed that necessary documentary evidence pertaining to authorized person as required by the KYC/CDD Guidelines of PSX was not obtained by the Respondent in the case of the following customers. The Respondent informed that it had obtained power of attorney from the customers however, KYC of the authorized persons had not been done:

Name of client	Name of authorized person	Client Code
Sabrina Dawood	Muhammad Anis Dayala	10944
Kulsum Dawood	Muhammad Anis Dayala	10942

- (iv) The Respondent had not obtained necessary documentary evidence from the following customer relating to beneficial ownership of legal person as required by the KYC/CDD Guidelines of PSX. Thus necessary documentary evidence was not obtained relating to identification of natural persons with controlling interest and who constitute the mind and management of the legal person or arrangement. The Respondent intimated that it has now obtained details of its shareholdings, including shareholding of its holding company:

Name of client	Name of shareholder of client	Client Code
Whitestone Limited	Awn Holdings Middle East Limited	10851

- (v) The Respondent did not obtain necessary documentary evidence from the following customer pertaining to physical presence of authorized representative of legal person as required by the KYC/CDD Guidelines of PSX:

Name of client	Name of authorized representative	Client Code
Whitestone Limited	Abdul Wahid Nagda	10851





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(vi) Customer risk categorization as provided by the Respondent was not as per the KYC/CDD Guidelines of PSX. For instance, online trading customers/non face-to-face customers, which are required to be marked as High Risk, were marked as Low Risk by the Respondent, as follows. Thus, risk assessment and categorization of customers had not been done by the Respondent based on customer's identity, nature of income, source of funding, and location/domicile of customer. This also indicated that Enhanced Due Diligence had not been performed for these customers by the Respondent:

S. No.	CLIENT CODE	CLIENT NAME	Type	Risk Categorization by Respondent	Risk Categorization as per PSX Guidelines
1.	03196	Syed Muhammad Zafar Alam	Internet based Client	Low	High
2.	03084	Saleem Zamindar	Internet based Client	Low	High
3.	03212	Sarwat Resalat	Internet based Client	Low	High
4.	09992	Akash	Internet based Client	Low	High
5.	05267	Asma Dar	Internet based Client	Low	High
6.	08911	Behzad Gill	Internet based Client	Low	High

(vii) There was lack of documentation of the following High Risk customer of the Respondent at the time of account opening, contrary to requirements of the KYC/CDD Guidelines of PSX. Trust and Institutions are required to be classified as High Risk as per KYC/CDD Guidelines of PSX. This also indicated that Enhanced Due Diligence had not been performed for these customers by the Respondent:

Code	Client Name	Risk Status	Remarks
17434	Whitestone Limited	-	Financial Statement is not attached with account opening form.

(viii) It was noted that the profiles of the following customers of the Respondent did not match with their high trading volume during the month of August 2017 which indicated lack of on-going due diligence by the Respondent, contrary to requirements of the KYC/CDD Guidelines of PSX:

Client Code	Client Name	Occupation	Risk Rating by Respondent	Source of Fund as per Respondent
08194	Najma Khatoon	House Wife	Low	Not provided
09945	Salma Batool	House Wife	Low	Not provided

(ix) The KYC/CDD Guidelines of PSX require that there has to be on-going training of brokers, their employees and agents to ensure that they understand their duties under





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KYC/CDD and are able to perform those duties satisfactorily. The Respondent had submitted that its employees attend training sessions but are not provided any certification and just attendance sheet is signed off. However, the Respondent had not provided any documentary evidence which indicated lack of appropriate training of its employees relating to KYC/CDD.

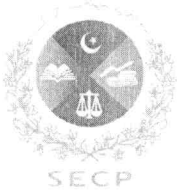
- (x) As per Circular 10 of 2017 issued by the Commission, brokers are required to maintain a record of customers whose trading has surpassed the minimum prescribed threshold in a prescribed format specified by the Commission. While reviewing the record provided by the Respondent for the month August 2017, it was noted that certain customers had crossed the minimum threshold as defined under the Circular. These customers were initially marked as High Risk based on aforesaid threshold however no details of Enhanced Due Diligence performed or any action initiated had been furnished by the Respondent.
- (xi) As per details submitted by the Respondent, it was noted that the following customers had crossed the prescribed threshold under Circular 10 of 2017 issued by the Commission however the same had not been reported by the Respondent:

For the Month of Aug 2017- As per Commission			Aug 2017- As per BMA		
UIN	UIN_NAME	Net Traded Amount	UIN	Name	Net Traded Amount
3520113577986	Sabrina Dawood	14,287,454	-	-	-
3520113578016	Kulsom Dawood	12,453,658	-	-	-
3520113578068	Azmeh Dawood	14,876,342	-	-	-
3520268023951	Mirza Mahmood Ahmad	23,757,275	-	-	-
4220107301109	Rehan Qaiser	5,205,193	-	-	-
4220199112265	Saad Iqbal	5,806,200	-	-	-
4230127651277	Hussain Jamil	10,542,090	-	-	-

Further, the Respondent had not reported 22 of its corporate customers which had crossed the minimum threshold limit of 25 million as per Circular 10. The above also indicated that Enhanced Due Diligence may also have not been performed by the Respondent.

- (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 and absence of proper training, it appeared that the Respondent did not have adequate checks and controls to monitor and remain alert regarding suspicious transactions.





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3. It appeared from the foregoing that the Respondent *prima facie* acted in violation of section 74(b) of the Securities Act, 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 13, 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 27, 2018. The Respondent filed written reply to the SCN vide letter of September 26, 2018. Hearing in the matter was rescheduled and held on October 05, 2018.

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

- (i) *Know Your Customer & Customer Due Diligence Guidelines ("KYC/CDD Guidelines") issued by PSX does not cover Currency Transaction Reporting (CTR). Further, it does not mention that reporting for CTR will to be covered in the KYC/CDD/AML/CFT policy. In addition, PSX has specifically instructed all brokers not to accept cash in excess of Rs.25,000/- and report it via PSX system if its client has himself deposited in the bank account due to margin shortfall/debit balance. Accordingly, the Respondent does not accept cash in excess of Rs.25,000/- as a matter of policy. No cash has ever been accepted by the Respondent above the threshold. Therefore, the Respondent believes that reporting of CTR is not required. Moreover, the Commission has not specified what provisions of Anti-Money Laundering Act, 2010 ("AML Act") have been violated. Section 7 of AML Act as amended vide Anti-Money Laundering (Amendment) Act, 2015 relates to reporting of suspicious transactions conducted or attempted by at or through such reporting entity (Respondent in this case) and such reporting entity knows, suspects or has reasons to suspect that transaction or a pattern of transaction involves:*

"(a) involves funds derived from illegal activities or is intended or conducted in order to hide or disguise proceeds of crime

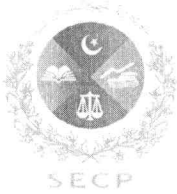
(b) is designed to evade any requirements of this section

(c) has no apparent lawful purpose after examining the available facts, including the background and possible purpose of the transaction; or

(d) involves financing of terrorism, including funds collected, provided, used or meant for, or otherwise linked or related to, terrorism, terrorist acts or organizations and individuals concerned with terrorism."

So far no transaction whatsoever conducted at or through the Respondent has been found to be fallen in under any of the above criteria and neither the Respondent has or had reasons to suspects that such transactions or pattern of transactions involved or involves the above criteria. However, if at all in future, any such transaction comes to our attention, we will immediately report the same to Financial Monitoring Unit ("FMU"). However, if the Commission suspects any such transaction undertaken at or through the Respondent, the same may please be known to us, so that we may report such transaction to FMU on the basis of the recommendation of the Commission. The Commission has also referred to Regulation 5 of AML Regulations 2015. The Respondent could not uncover such Regulations, whereas the State Bank has issued Anti-Money Laundering and Combating the Financing of Terrorism





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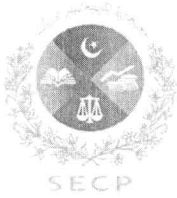
(AML/CFT) Regulations for Banks/DFIs, 2015 which were amended in 2017. These are meant for Banks and DFIs. At any rate, the Respondent takes all possible measures to prevent suspicious transactions on part of our clients, whether or not any transaction or intended transaction falls within the ambit of any laws, rules and regulations. On the other hand, the Respondent has water-tight KYC and CDD internal policy and framework in accordance with the KYC/CDD Guidelines issued by PSX. The Policy is approved by the Board of Directors.

Respondent accepted during the hearing that it shall incorporate the requirement of CTR in its policy.

- (ii) *All bases specified in the KYC/CDD Guidelines are fully covered and implemented at all times via KYC, Account Opening and Sub Account Forms. If any base is lacking, the Respondent does not open such account of its potential client. Apart from customer's identity details, the Respondent also takes their bank verifications, email address, contact details without which the account cannot be opened. Regarding KYC/CDD Guidelines, the Respondent always determines what does the customer intend to do etc. as specified in Clauses 3.6 and 3.7 of the KYC/CDD Guidelines, including information as to age, gender, occupation, knowledge of market, etc. for ascertaining the risk taking capacity of the customer. With regard to the instances cited in sub-paras a. to d., the Respondent's submissions are as follows:-*

- a. *Memoona Tanweer (Client code 08275). The client has clearly mentioned her occupation as Business (CEO & Director of GTN Fabrics) in our Trading form as well as in CDC SAOF and we have fed her occupation as Business in our system. CDC setup report also shows her occupation as Business. The Respondent has already marked her in the category of "High Risk" upon increase in ' trade volume beyond Rs.5 Million regarding enhanced due-diligence. Our email dated 21 March, 2018 also gives the full details regarding query related with this account. The KYC/CDD form used was old one and now we have introduced new form with all details. The subject client mentions house wife in one column, which has now been rectified and got initialed by her. Revised Form was submitted with the Comments, which is also furnished.*
- b. *Sabrina Dawood- In the KYC Form, it is mentioned that the client's source of fund is via dividends which she gets, loan/borrowed money which she takes and also her own investment. The client belongs to a well known family. The Respondent has accounts of her other family members such as Hussain Dawood with us, as well therefore the background check list Form is properly filled and completed. It is not a requirement of the law that evidence for such cases be obtained such as counter foils of dividend warrants, bank statements, loan agreements, etc. and neither any customer can be expected to provide such document. The lady belongs to a well-known high profile reputable business family. However, the Commission may guide us as to what documentary evidence be obtained from this lady in relation to her source of investment, so that we may request the same on the basis of the Commission's recommendation.*
- c. *Salma Batool- Her KYC was done using same Form as available in KYC/CDD Guidelines issued by PSX in March 16, 2012 (Reference Annexure A" thereof) and therefore there was full compliance. However, the Respondent has enhanced the scope of the annexure by adding more details in its new Form which was also shared with PSX. The KYC has also been obtained from the client as per the new Form. Revised Form was submitted with the Comments, which is also furnished.*

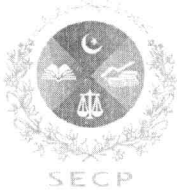




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- d. *Najma (Client code 08194): Her KYC was done using same Form as available in KYC/CDD Guidelines issued by the Exchange in March, 2012 (Reference Annexure "A" thereof) and therefore there was full compliance. However, the Respondent has enhanced the scope of the annexure by adding more details in its new Form which was also shared with PSX. The KYC Form has also been obtained from all account holders as per the new Form. Revised Form was submitted with the Comments, which is also furnished.*
- (iii) *The Respondent always determines whether a customer is acting on behalf of another person and determines true identities of its customers. Where authorized persons are appointed to operate the accounts and/or give instructions, full credentials of the authorized persons are obtained, in addition to authorizations on prescribed form or powers of attorney. The position with regard to the two accounts mentioned in sub-para (iii) of Para 4 of the SCN, the position is as follows:-*
- Sabrina Dawood and Kulsum Dawood both have submitted Power of Attorney in the name of Muhammad Anis Dayala who is also an account holder of BMA. The KYC of Muhammad Anis Dayala (who is also the Power of Attorney of the above mentioned two accounts) is attached for your reference. A copy of their Power of Attorney was submitted with the Comments, which is also furnished.*
- (iv) *As mentioned in the Comments, the company i.e. Whitestone Limited is a foreign based investment company with repatriable status. Their parent company is AWN Holdings Middleeast Limited from which they receive funds for investment in Pakistan. Furthermore, documents along with the Account Opening Form that were submitted earlier are: 1. Resolution of Board of Directors, 2. Certificate of Incumbency, 3. NTN Verification, 4. Form 181, 5. Resolution of Board of Directors, 6. Incorporation Certificate, 7. Memorandum & Articles of Association, 8. Relevant Passport and CNIC copies. All payments made and received against the account match with the title of account in their bank as well. Nonetheless, in deference to the Investigation Team's observation, the Respondent had obtained details GI" its shareholdings; including shareholding of its holding company, namely AWN Holdings Middle East Limited, copy of was submitted with the Comments. Furthermore, subsequent to the information provided; the Commission asked for the ultimate beneficiaries to which a detailed email, having details of the ultimate parent company (AWN Holdings Limited - USA) and shareholdings of it was sent on 25 May, 2018 which is also furnished. Respondent stated during the hearing that requisite details relating to beneficial ownership of Whitestone Limited was obtained post-inspection.*
- (v) *As mentioned in the Comments, the authorized representative of Whitestone Limited had physically visited the Respondent's office located at Level 8, Uni Tower, I. I. Chundrigar Road, Karachi. The Sales Person, Mr. Iftikhar Hasan (mentioned in the Form) personally had a meeting with them in the Respondent's office. Furthermore, the authorized person can also be contacted via Skype or any virtual/online conference, if required. UAE is following FATF recommendations, according to the list of entities on Google Website. Snap shot was submitted with the Comments, which is also furnished.*
- (vi) *As mentioned in the Comments, the online accounts are opened after physical verification of the account holders. The post account reports are emailed on their registered email addresses along with SMS trade confirmation on their mobiles as well. They have to input a first level password, a second level password and then a pin code to execute a trade. Furthermore, they are allowed to transact when sufficient*



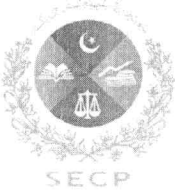


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funds/shares are already deposited and available in their accounts. No KATS is available to them. They deposit cheques of their own title and no cash deposits over Rs.25,000/- are accepted. The withdrawals are made in their name only. The risk assessment and categorization of customers are done on the basis of their identity, nature of income source of funds and their location. No MF or MTS is allowed to online clients as well. Due to these high checks, they are marked as low risk level however if during KYC, for example if a PEP is opening his account under online, then automatically the account is marked as High Risk. If there is any change as if the online account wants to avail MF or MTS facility then the risk level is changed accordingly. Therefore proper KYC & CDD is implemented for online clients as well. If even this is not acceptable then no securities broker will be able to have online customers, which will not be in the interest of the securities market.

- (vii) *As mentioned in the Comments, the Respondent's KYC/CDD Policy fully covers all the requirements of Regulation 16 of Securities Brokers (Licensing and Operations) Regulations, 2016, as well as PSX's KYC/CDD Guidelines, which is implemented in true letter and spirit. Whitestone Limited is marked as High Risk and therefore the Respondent has assured that all payments received and made to the client are via their bank account with their title only. It is a foreign based investment company with repatriable status. Their parent company is AWN Holdings Middleeast Limited from which they receive funds for investment in Pakistan. Furthermore, documents along with the account opening form were submitted earlier are: 1. Resolution of Board of Directors, 2. Certificate of Incumbency, 3. NTN Verification, 4. Form 181, 5. Resolution of Board of Directors, 6. Incorporation Certificate, 7. Memorandum & Articles of Association, 8. Relevant Passport and CNIC copies. The authorized representative had physically visited the Respondent's office located at Level 8, Uni Tower, I. I. Chundrigar Road, Karachi. The sales person Mr. Iftikhar Hasan (mentioned in the Form) personally had a meeting with them in the Respondent's office. The Respondent has also requested the client to provide their Audited Accounts. The financial statements provided by the client were submitted along with details of shareholding. Copy of the financial statements received are furnished.*
- (viii) *As mentioned in the Comments, the account of Najma (A/c # 08 194) is a joint account of four persons wherein the main account holder is housewife, 1st joint holder is her son (student), 2nd joint holder is her daughter (student) and the 3rd joint holder is a retired person. In the month of August, 2017 the four account holder combined have bought shares worth Rs.121,375/- (total 503 shares) and sold shares worth Rs.207,5851- (total 500 shares) which we do not think is high trading volume. For Salma Batool (A/c # 09945) The client is a housewife and the net traded amount for the month of August, 2017 in this account is Rs.136,245/- only which we do not think is a high trading volume. Report along with KYC forms was submitted with the Comments, which is also furnished. Respondent stated during the hearing that source of income/funds of clients Najma Khatoon and Salma Batool have now been furnished;*
- (ix) *As mentioned in the Comments, the Respondent's employees attend KYC and CDD sessions organized by PSX, NCCPL and CDC from time to time to update themselves. However, no certificates are issued by the organizers and training sessions are conducted on gratis basis. Even records of attendance are not maintained by these organizations. If necessary, the Respondent can submit affidavits of some of the employees to substantiate this fact. The Respondent even enhances the scope of KYC/CCD requirement by periodic in-house training and sessions. The Commission's*

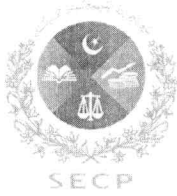




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- authorized officers are most welcome to visit such sessions if required for which the Respondent can send advance intimations to the Commission. On, the other hand, the Respondent's key employees actively involved in our core operation are highly qualified. Sample MBA degrees obtained by the employees via recognized institutes of HEC have already been submitted with the Comments, which is also furnished.*
- (x) *As mentioned in the Comments, the accounts have been highlighted as High Risk. Furthermore, the Respondent has marked High Risk to 28 instead of 22 corporate accounts wherein the minimum threshold of 25 million exceeded for these corporate accounts. Furthermore, the Respondent has developed a system via which now all clients according to their nature/limit (in relation with Circular 10 of the Commission) are reflected by just a click of a button and any trading in excess of threshold would automatically change the risk category. It has also been ensured that all payments made and received are from the client's own bank accounts only.*
- (xi) *As mentioned in the Comments and Para (i) of this reply, as to the generation of Suspicious Transaction Report ("STR"), the Respondent has conferred with its Legal Counsel, who is of the view that such reporting becomes necessary when the pertinent entity (Respondent in this case) knows, suspects or has reasons to suspect that transaction or a pattern of transaction involves funds derived from illegal activities specified in Section 7 of AML Act. So far no transaction whatsoever conducted at or through the Respondent has been found to be fallen in under any of such criteria and neither the Respondent has or had reasons to suspects that such transactions or pattern of transactions involved or involves the above criteria. However, if at all in future, any such transaction comes to the Respondent's, it will immediately report the same to FMU. On the other hand, there are no means for the Respondent to determine whether a transaction is being effectuated from unlawful funds and such determination does not fall in the realm of the Respondent. According to our Legal Counsel, if the Respondent makes an incorrect reporting on the basis of assumptions and suppositions, then such client can take the Respondent to cleaners by lodging civil and criminal proceedings for defamation and damages for tarnishing the image and reputation of the client. However, if the Commission based on the Report is of the view that any of the transactions conducted by any of the Respondent's clients mentioned in sub-para (xi) of Para 4 of the SCN, required reporting to FMU as suspicious transactions, then Commission may direct the Respondent in writing so that the Respondent may report such transactions to FMU on the basis of the Commission's direction.*
- (xii) *As mentioned in the Comments and Para (i) of this reply, as to the generation of STR, the Respondent has conferred with its Legal Counsel, who is of the view that such reporting becomes necessary when the pertinent entity (Respondent in this case) knows, suspects or has reasons to suspect that transaction or a pattern of transaction involves funds derived from illegal activities specified in Section 7 of AML Act, which is not the case here.*
- (xiii) *The Respondent's Comments to the preceding observations and the evidence provided substantiate the fact beyond doubt that the Respondent has more than satisfactory customer identification risk assessment and categorization of client in addition to Enhanced Due Diligence, on-going due diligence, training and adequate checks and controls. This observation is most surprising since the Respondent always accords top priority to the above requirements not only to comply with the laws, rules and regulations, but also as a matter of its own policy and commitment to conduct its affairs in accordance with the highest legal and ethical standards. If the Commission*





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believes that the above criteria are lacking, it may specifically point out the same with regard to each case so that we may clarify the position or dispel any doubts. As mentioned above, the Respondent has developed a system via which now all clients according to their nature/limit (in relation with Circular 10 of the Commission) are reflected by just a click of a button and the risk category is changed accordingly. No accounts can be opened at the Respondent without proper categorization and risk assessment of clients which include all of their credentials in the Account Opening Form (KYC Form is part of account opening form).

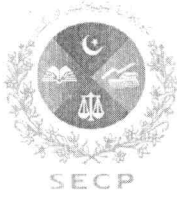
- (xiv) *Due to cumbersome requirements under the relevant regulations and guidelines forming subject matters of the SCN, there may have been some unintentional shortcomings in the records maintained by the Respondent. Hence, if at all, there is any inadvertent lapse, the same may be condoned in the interest of justice.*

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 Respondent's statement in its response that it could not uncover the Anti Money Laundering Regulations, 2015 illustrates that since it does not even have knowledge of the legal framework it been non-compliant with the same thereby acting in violation of clause 13 of the KYC/CDD Guidelines of PSX. Respondent has accepted during the hearing that it shall incorporate CTR in its policy;
- (ii) Respondent has stated that it has obtained revised forms from Memoona Tanweer, Salma Batool and Najma which now contains all the necessary information. Respondent also accepted during the hearing that evidence of source of funds is required to be obtained for Sabrina Dawood, which was not available with it till the date of hearing illustrating inability of the Respondent to document investment profiling of the said customer in non-compliance of the law;
- (iii) KYC of the authorized person for Sabrina Dawood and Kulsum Dawood has now been furnished by the Respondent;
- (iv) Respondent stated during the hearing that requisite details relating to beneficial ownership of Whitestone Limited was obtained post-inspection which exhibits that the same was not being maintained earlier, in contravention of the law;
- (v) Respondent stated during the during that the source of income/funds of Najma Khatoon and Salma Batool have now been furnished;
- (vi) Respondent stated that it has now developed a system via which all customers according to their nature/limit (in relation with Circular 10 of 2017 issued by the Commission) are reflected by just a click of a button and any trading in excess of threshold would automatically change the risk category; and
- (vii) in relation to the Respondent's statement in 5(xi) above regarding generation of STR and reporting to FMU, it is clarified that the primary allegation in the SCN was that the Respondent had failed to maintain record and accordingly make it available/report to the inspection team as required under Circular 10 of 2017. The said Circular requires brokers to assess compliance status with regulatory requirements relating to KYC, CDD and EDD, wherein net traded amount of an investor in a month is equal to or greater than the thresholds stated in the Circular. Brokers are also required to ensure that in case of non-compliance appropriate action, which includes EDD and





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generation of STR, is initiated and a record of the same is being maintained. Brokers are further required to maintain summary report of the investors having net investment above or equal to the threshold which shall be inspected by the Commission/PSX. The Respondent has failed to maintain the mentioned summary report details of which are stated in the SCN.

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, which have been rectified or are being 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.