



Securities and Exchange Commission of Pakistan

Adjudication Division
Adjudication Department-I

Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to BMA Capital Management Limited

Dates of Hearing

December 28, 2020

Order-Redacted Version

Order dated January 08, 2021 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of BMA Capital Management Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated May 21, 2020
2. Name of Company	BMA Capital Management Limited
3. Name of Individual*	The proceedings were initiated against the Company i.e. BMA Capital Management Limited and its Compliance Officer
4. Nature of Offence	In view of alleged violations of 4(a), 18(c)(iii), 6(4),7(1)(b), 6(3)(a), 13(3), 6(3)(c), 9(4)(b), 13(I) and 9(4)(a) of AML Regulations through SCN dated May 21, 2020 and order dated January 08, 2021 was passed.
5. Action Taken	<p>Key findings were reported in the following manner:</p> <p>I have gone through the fact of case, the written as well as oral submissions of the Respondent and its Authorized Representatives. In this regard, I observe that:</p> <p>i. The Authorized Representatives admitted during the hearing that deficient AML/CFT policy was in place and it was updated on February 20, 2019 subsequent to the identification or deficiencies by the Commission's team. Therefore, the Respondent cannot deny from the violation of Regulation 4(a) regarding deficiencies exist in its AML/CFT policies at the time or Review.</p>



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With regard to the system which can generate alerts about the client's expiry CNIC, in response to LOF the Respondent neither exhibited any evidence nor produce any it's correspondence with the customers whose CNIC/NICOP have been expired. The stance of Authorized Representatives that instances were not identified in review is not correct as in response to the Commission's LOF, Respondent submitted updated CNICs of identified instances. Furthermore, during the hearing Authorized Representatives submitted that now the Respondent has automated requisite requirement through deployment of an alert generation system. Thus, Respondent was in contravention of the Regulation at the time of Review.

- ii. The defaults of Regulation 18(c)(iii) were consequential to the default of Regulation 4(a) or the AML Regulations. Therefore, Respondent and its Compliance Officer has contravened Regulation 18 (c) (iii) of the AML Regulations.
- iii. In response to letter of findings, the Respondent submitted evidence of carrying out verification of CNIC on May 09, 2019 E-Sahulat NADRA Verification system in respect of 12 instances. This reflects that those verifications were carried out after identification of non-compliance in Review. During the hearing, the Authorized Representative also admitted that some verifications were completed after the Review. Therefore, the Respondent cannot deny the default of the Regulation 6(4) of the AML Regulations.
- iv. During the hearing, the Authorized Representatives admitted that subsequent to the Review. Respondent has rectified the said default of the Regulation 7(1)(b) of the AML Regulations respect of in three identified instances.



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- v. With regard to the violation of Regulation 6(3)(a) of the AML Regulations, details of four highlighted instances, are as follows:

Instance 1:

In letter of findings, the following deficiencies were observed:

- i. Non-availability of Memorandum and Articles of Association.
- ii. Non-availability of Certificate of Incorporation
- iii. List of Directors on 'Form-A' issued under Companies Act, 2017 was also not available.
- iv. CNICs of most of the Directors were expired

The Respondent submitted that it has obtained attested CNICs of the client and remaining documents have been requested from the client. It is evident from the response that information and details as required by the Regulations was not arranged and proper KYC or CDD was not carried out. This observation attracts violation of Regulation 6(3)(a) of AML Regulation. Further, the Respondent failed to 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, which is prerequisite information to ensure compliance of the Regulation 13(3) of the AML Regulations.

Instance 2:

In letter of findings, the following deficiencies were observed with regard to instance no. 2:

- i. KYC form reflects that the client was a government employee, working as Monitoring Assistant in Irrigation Department. Attested copy of his service card or certificate on letter head of the employer was not



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	<p>obtained by the Respondent as required under the AML Regulations</p> <ol style="list-style-type: none">ii. KYC form of Joint Account holder reflects him as a sole proprietor. However, no further details were available with Respondent as required under clause 2 of Annexure-1 of AML Regulations relating to sole proprietorship.iii. It may further be noted that in CDC sub account form the occupation details of Joint Account Holder has not been provided. <p>The Respondent informed that the client has been requested to provide copy of service card and the joint account holder is a retired person currently engaged in farming with a monthly income of Rs: 25,000/-. The response of the Respondent it depicts that information and details as required by the Regulations was not available with the Respondent at the time of Review and proper KYC and COD was not carried out. During the hearing, the authorized representatives admitted the violation of Regulation 6(3)(a) and claimed that subsequent to the Review, Respondent has made rectification of identified defaults.</p> <p style="text-align: center;"><u>Instance 3:</u></p> <p>As per account opening form the client is a Goldsmith and his net income is Rs.125,000/-. The following details were not available with Respondent as per the requirements of AML Regulations.</p> <ol style="list-style-type: none">i. Copy of registration certificate for registered concerns.ii. Copy of certificate or proof of membership of trade bodies etc, wherever applicable.iii. Declaration of sole proprietorship on business letter head.iv. Account opening requisition on business letter head.
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v. Registered/ Business address.

The Respondent informed that the income and nature of business of client was confirmed from client via recorded call during KYC process. Respondent submitted in response to LOF that that deficient documents have been requested from the client. The default of Regulation 6(3)(a) of AML Regulation is evident from the response of the Respondent.

Instance 4:

As per account opening form the client is working in an oil refinery as an Executive. It was observed that Respondent has not obtained the attested copy of service card or certificate on letter head of the company as required under the AML Regulations. It was also noted that the available copies of CNICs were expired. The Respondent submitted in response to LOF that it has now acquired the attested CNIC of the client and client has been asked to provide the updated status of his job along with his employee card. This clearly reflects that Respondent was in default at the time of Review. During the hearing, the Authorized Representatives also admitted the violation of Regulation 6(3)(a) and claimed that subsequent to the Review, rectification has been made.

vi. With regard to the violation of Regulations 6(3)(c), 9(4)(b) and 13(I) of the AML Regulations, in seven highlighted instances, its details as follows:

Instance 1:

The client was marked as high-risk client, however, no documentary evidence in respect of source of income/funds was obtained by the Respondent. In reply to LOF the Respondent responded that the client is a director and chairman in a Textile Company and his



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transactions matches with his profile. Respondent said response, transpires that at the time of Review, Respondent was not in possession of any evidence of source of funds in respect of that identified client. Thus, violation of Regulation 6(3)(c) and Regulation 9(4)(b) of AML Regulations is evident. Violation of Regulation 13(1) of AML Regulations on part of Respondent can also not be denied, which it was required to monitor business relations with customer on an ongoing basis to ensure that the transactions are consistent with the regulated person' knowledge of the customer, its business and risk profile and where appropriate, the sources of funds.

Instance 2:

The identified client was appearing as Business Executive. However, no documentary evidence in respect of source of income/funds was available with the Respondent in respect of that client. Respondent submitted that the client remained Head of various renowned companies. However, after his appointment on a Senior Government position, Respondent marked him in 'High Risk' category. It was contended that profile of said customer matches with his trading pattern. The contention of Respondent is not tenable and on the basis of profile or previous experiences, the regulatory requirement cannot be ignored. Thus, at the time of Review, Respondent was in contravention of Regulation 6(3)(c) and Regulation 9(4)(b) for not having any evidence or source of funds of that identified client. Furthermore, in consequence to above, violation of Regulation 13(1) of AML Regulations is also an established fact.

Instance 3:



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The client was marked as high-risk client. However, level of income was documented for ongoing monitoring. The contention of Respondent that client is a son of renowned businessman and expecting a salary certificate is not expected from such client, is not tenable. Income tax return or some other documentary evidence could be relied upon by the Respondent. Hence, Respondent was in contravention of Regulation 6(3)(c) and Regulation 9(4)(b) for not having any evidence of source of funds of that identified client at the time of Review. Furthermore, default of Regulation 13(1) of AML Regulations was therefore consequential to the violations of Regulation 6(3)(c) and Regulation 9(4)(b).

Instance 4:

In respect of identified client, the financial statements were not obtained by the Respondent to ascertain source and level of income. During the hearing the Authorized Representatives failed to exhibit any evidence that at the time of Review, Respondent had any evidence of source of funds of that identified client. Thus, Respondent was in violation of Regulation 6(3)(c), 9(4)(b) and 13(1) of AML Regulations.

Instance 5:

The client was marked as high-risk client by the Respondent but at the same time Respondent failed to obtain and document client's source. During the hearing the Authorized Representatives failed to exhibit any evidence that at the time of Review, Respondent had any evidence of source of funds of that identified client. Thus, Respondent was in violation of Regulation 6(3)(c), 9(4)(b) and 13(1) of AML Regulations.

Instance 6:



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- i. The client was documented as CEO of a Textile Company and marked as high-risk client. In that case, neither any source of income was established nor level of income was documented by the Respondent. The Respondent submitted that transaction-based documentary evidence is not obtained in cases where the business profile matches with the profile of the customer. It was contended that on the basis of scale of his business, Respondent had a reason to believe that the client has the capacity to make such investments. The contention of Respondent is not tenable and on the basis of profile, the regulatory requirement cannot be ignored. Thus, at the time of Review, Respondent was in contravention of Regulation 6(3)(c) and Regulation 9(4)(b) for not having any evidence of source of funds of that identified client. Furthermore, default of Regulation 13(1) of AML Regulations was therefore consequential to the violations of Regulation 6(3)(c) and Regulation 9(4)(b).

Instance 7:

The client was documented as Director on the board of a Listed company and marked as high-risk client. However, neither any source of income was established nor level of income was documented by the Respondent. The Respondent submitted that transaction-based documentary evidence is not obtained in cases where the business profile matches with the profile of the customer. It was contended that financial statement of that listed company was publicly available on its website. The contention of Respondent is not plausible and relevant as the account pertains to an individual and due diligence obligations of the Respondent cannot be disregarded. Therefore, Respondent was in contravention of Regulation 6(3)(c)



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	<p>and Regulation 9(4)(b) for not having any evidence of source of funds of that identified client. Further, default of Regulation 13(1) of AML Regulations was therefore consequential to the violations or Regulation 6(3)(c) and Regulation 9(4)(b).</p> <p>vii. With regard to the violation of Regulation 9(4)(a) of the AML Regulations, in six highlighted instances, in response to letter of findings, the Respondent failed to submit the evidence of approval of senior management in respective cases. Therefore, the Respondent has violated Regulation 9(4)(a) of the AML Regulations.</p> <p>In view of the foregoing and admission made by the Representatives, contraventions of the provisions of Regulations 4(a), 18(c)(iii), 6(4),7(I)(b), 6(3)(a), 13(3), 6(3)(c), 9(4)(b), 13(I) and 9(4)(a) of AML Regulations have been established. Therefore, in terms of powers conferred under section 40/\ of the Act, a penalty of Rs.650,000/- (Rupees Six Hundred Fifty Thousand Only) is hereby imposed on the BMA Capital Management Limited. However, in reference to Regulation 18 (c) (iii) Compliance Officer of BMA Capital Management Limited is warned to be careful in future. The Respondent is advised to examine its AML/CFT policy & procedures to ensure that the requirements contained in the AML Regulations are met in letter and spirit.</p> <p>Penalty order dated January 8, 2021 was passed by Executive Director (Adjudication-I).</p>
6. Penalty Imposed	A Penalty of Rs. 650,000/- (Rupees Six Hundred Fifty Thousand Only) was imposed on respondents to ensure compliance of law in future.
7. Current Status of Order	Appeal has been filed by the respondents

Redacted version issued for placement on website of the Commission.