



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

Through Courier

File No. 1(126) SMD/ADJ/KHI/2018

October 29, 2018

Elixir Securities Pakistan (Private) Limited,
Through its Chief Executive officer,
8th Floor, Dawood Center,
MT Khan Road,
Karachi.

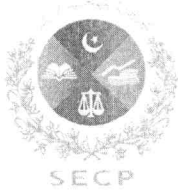
Subject: ORDER IN RESPECT OF SHOW CAUSE NOTICE DATED SEPTEMBER 3, 2018, BEARING NO. 1(126) SMD/ADJ/KHI/2018

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
Elixir Securities Pakistan (Private) Limited

<i>Date of Hearing</i>	<i>September 26, 2018</i>
<i>Present at the Hearing</i>	<i>Fawaz Viliaani, CEO</i> <i>Fahad Muslim, CFO</i> <i>Ahsan Aftab, Manager</i>
<i>Place of Hearing</i>	<i>Through Video Conference from Regional Office,</i> <i>Karachi</i>

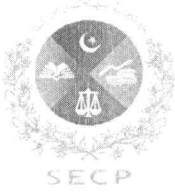
ORDER

This Order shall dispose of the proceedings initiated through Show Cause Notice (SCN) bearing No. 1(126) SMD/ADJ/KHI/2018 dated September 03, 2018. The SCN was served on Elixir Securities Pakistan (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 12, 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 April 27, 2018 (“**Report**”) *inter alia* revealed the following:

- (i) The Respondent’s KYC/CDD policy approved by its Board of Directors through resolution dated November 15, 2017 did not include reporting of Currency Transactions (CTR) as required under the KYC/CDD Guidelines of PSX read with Anti Money Laundering Act, 2010. Further, the said policy was approved by the Respondent’s Board of Directors after the inspection team raised an observation on an earlier approval of the Board of Directors dated December 2, 2013 that lacked specification of policies which were presented and also that the KYC/CDD related policy and procedures lacked date of its approval by the Board of Directors. Regulation 4.17 of the PSX Regulations requires that the KYC and CDD policy should be approved by the Board of Directors of the broker.
- (ii) The KYC/CDD Guidelines of PSX requires brokers to ensure their approved policies are effectively disseminated to and understood by the relevant personnel. The Respondent furnished an email for circulation of its AML and KYC/CDD policies. However, the documentation lacks evidence that the said policies had been understood and signed off by the employees, and identification of names of employees and their relevant department. Further, clause 6 of the KYC/CDD/AML





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- policy of the Respondent requires that all employees should sign the acknowledgement form confirming that he/she has read and understands the Respondent's policy and procedures. However, evidence for the same was not provided by the Respondent. The Respondent informed that after the inspection team's said observation, it had taken signed acknowledgements from all employees.
- (iii) As per the KYC/CDD Guidelines of PSX, brokers are required to obtain and document sufficient information on the purpose and intended nature of account to be opened/ maintained with them and develop a profile of the customer based on results of customer identification and risk assessment. Brokers are also required to maintain and document the information and record relating to customers' business and risk profile, historical pattern of transactions, and pattern and source of funding of the account. Further, under clause 7.2 relating to Client Identification Procedures for Natural Persons of the Respondent's KYC/CDD/AML policy, the Respondent is required to obtain, verify and record information including (i) details of employer/business, (ii) source of income, gross annual income, sources of fund for stock market, expected value of investment, (iii) knowledge of stock market and investment experience, and (iv) normal or expected mode of transaction. It was observed that investment profiling of customers had not been documented as specified in the KYC/CDD Guidelines of PSX as well as the KYC/CDD/AML policy of the Respondent.
- (iv) It was observed that customer information furnished by the Respondent did not contain information regarding source of funds and nature of income. This is a requirement of the KYC/CDD Guidelines of PSX.
- (v) It was observed that risk categorization was not maintained by the Respondent in accordance with the KYC/CDD Guidelines of PSX in High/Medium/Low risk categories. The Respondent informed vide email dated November 06, 2017 that risk profiling was done on KYC forms, however such forms were not provided.

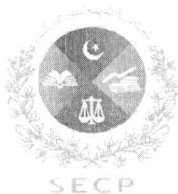
Code	Client Name	Status as per UIN/ Client List	Risk Categorization as suggested in KYC/CDD Guidelines
R1203	Saima Zatoon Ahmed	Foreigner / Online	High
R4281	Iqbal Lakhani	Resident/ Online	High
R1006	Sitara Begum	Resident / Online	High
650	Khatija Adamjee Foundation	Resident / Trust	High
680	Polunin Funds	Foreign Fund	High

Absence of risk categorization also indicated that the Respondent had not performed Enhanced Due Diligence (EDD) for its High Risk customers as required under KYC/CDD Guidelines of PSX.

- (vi) There was lack of documentation of the following High Risk customers of the Respondent at the time of account opening which exhibits lack of EDD as required under the KYC/CDD Guidelines of PSX:

Code	Client Name	Status as per UIN/ Client List	Risk Categorization as per PSX Guidelines	Remarks
R1203	Saima Zatoon Ahmed	Foreigner / Online	High	No documentary evidence with regard to source of fund and nature of business, and KYC form not provided
R1006	Sitara Begum	Resident/ Online	High	No power of attorney in the name of authorized person was found. No KYC





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				form is provided. Further the SOAF and related documents include payment request from client for payment to persons other than client
R4281	Iqbal Lakhani	Resident / Online	High	No source of income has been obtained. Being retired person, no documentary evidence to that effect has been obtained. KYC form is also not provided
650	Khatija Adamjee Foundation	Resident / Trust	High	Copy of complete set of account opening forms and related documents related to KYC/ CDD were not provided
680	POLUNIN FUNDS	Foreign Fund	High	Fund registration and other related documentary evidence for assessing the beneficiary and controlling interest are not provided. Financial statements are not provided. KYC form is also not provided
629	Sind Bank Limited	Local Govt	Low	Copy of complete set of account opening forms and related documents related to KYC/ CDD were not provided

(vii) It was noted that the profiles of following customers did not match with their high trading volumes during the months of July and August 2017 which showed lack of on-going due diligence and inconsistency in customer risk profile and their respective trading activity:

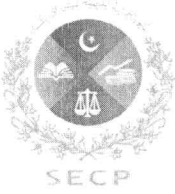
Client Code	Client Name	Occupation	Remarks
R1203	Saima Zaitoon Ahmed	Business	No documentary evidence with regard to source of fund and nature of business is provided
R1765	Rukhsana	House hold	Only copy of visiting card of Husband is provided and no other evidence to substantiate the source of funds
R0672	Muhammad Ayub	Retired Person	Respondent has mentioned that the client is the President of a bank, whereas the CDC Setup report shows that he is retired

(viii) The following instances were not furnished by the Respondent indicating that cash receipts exceeding Rs.25,000 were not reported to PSX as required under the KYC/CDD Guidelines of PSX:

Client Code	Client Name	Date	Cash received	Status
R2898	Jawad Ahmed	August 30, 2017	145,000	Not found in "Cash Excess Receipt" report of PSX for the month of August 2017
R4159	Salman Khan	August 11, 2017	100,000	
R4245	Muhammad Tahir Madni	August 03, 2017	33,000	

(ix) The Respondent had not provided any evidence of on-going trainings with respect to AML and KYC/CDD. 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 KYC/CDD and are able to perform those duties satisfactorily.





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- (x) Circular 10 of 2017 issued by the Commission requires brokers to maintain record of customers having trades above the prescribed threshold. While comparing records maintained by the Respondent relating to compliance of Circular 10 of 2017, with data obtained from NCCPL for all markets for the month of July 2017, it was observed that the following instances were not included in the records maintained by the Respondent:

UIN	UIN_NAME	UIN CLASS	Net Value of Trading (Rs in Million)
3520203408917	MUHAMMAD ATIF BAJWA	Individual	13.33
3520258291471	MUHAMMAD SHAMAIL JAVAID	Individual	23.64
4220198860078	SITARA BEGUM	Individual	5.36
4230104381095	IQBAL LAKHANI	Individual	15.36
4230115425837	MUHAMMED SADIQ	Individual	5.98

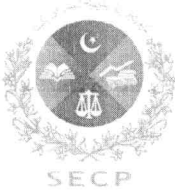
Since customers were not included in details related to Circular 10 of 2017, it appeared that evidence of Enhanced Due Diligence was not documented. Further, the Respondent had also not maintained complete information as required by the said Circular such as telephone number(s) in respect of certain customers, and initial and revised risk category of all customers.

- (xi) The Respondent's compliance function had not highlighted compliance related issues in the matter of AML and KYC/CDD in its compliance reports, as required by the KYC/CDD Guidelines of PSX. Further, the compliance report furnished by the Respondent was for the month of September 2017, and had not provided compliance reports for the months of July and August 2017. The KYC/CDD Guidelines of PSX require that it is the responsibility of the compliance function to ensure that KYC/CDD guidelines are being complied with as well as with other regulatory requirements. This includes maintaining record of violations / non-compliance identified which has to be reported to the Board of Directors. Any such record has to be available for inspection by the Commission and the securities exchange as and when required.
- (xii) In view of absence of customer identification, risk assessment and categorization of clients, absence of enhanced due diligence, lack of ongoing due diligence, less effective compliance function reporting structure and lack of proper training, it appeared that the Respondent did not have adequate checks and controls to monitor and remain alert regarding suspicious transactions.

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 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 24, 2018. The Respondent filed written reply to the SCN vide letter of September 24, 2018.





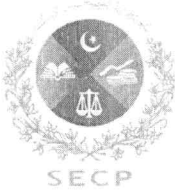
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Hearing in the matter was rescheduled on request of the Respondent and held on September 26, 2018.

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

- (i) *Based on issues highlighted by the inspection team, Respondent has obtained specific approval from the Board of Directors on December 13 2017 relating to CTR.*
- (ii) *Based on observation of the inspection team, Respondent has obtained signed acknowledgements from all employees.*
- (iii) *Part of the Respondent's AML questionnaire requires enquiry into the appetite and amount of investment the client intends to make. The questionnaire has also now been modified to check and correlate the risk appetite of the client and based on the assumption we do scrutinize the trading patterns for any risk profiling.*
- (iv) *Once the Account is operated through a comprehensive routinization procedure with regard to the client's identity, the Respondent also ensures that no third party cheques/cash are accepted neither issued from/to the clients. Such controls serve that the funds are routed by the clients to the Respondent through compliant/proper/documentated channels and which also ensures that such movement of funds is also surveillance by the client's respective banks. Respondent accepted during the hearing that it shall maintain record of source of income/fund for clients.*
- (v) *With reference to risk categorization, all documents required by the inspection team were duly provided, however this may be misplaced due to communication error at either part. However, for specific clients mentioned in SCN information is furnished. KYC/CDD checklist provided by PSX automatically accords risk as High/Medium/Low depending upon the credentials filled up by the clients. Therefore, at times it is not in the control of the securities brokers to accord different category of risk.*
- (vi) *Documents relating to High Risk clients are now furnished.*
- (vii) *For clients whose trading does not match their profiles, missing information has been furnished.*
- (viii) *The Respondent has reported the highlighted instances to PSX for receiving cash in excess of Rs.25,000.*
- (ix) *Informal training sessions are held from time to time in the organization in various other segments of brokerage business. The law is silent as to the mode and period of training. It is therefore not correct that there has been no on-going training of the employees and agents.*
- (x) *Record relating to Circular 10 of 2017 furnished. Respondent based on the investment profiling assigned the trading limit assigned to the clients according the risk appetite and knowledge of the client, therefore it is clarified that the trade in future contracts does not reflect actual picture of trading, therefore, does required to apply EDD based and revised the risk categories based on the future market transactions.*
- (xi) *In relation to compliance reports maintained by the Respondent, the Respondent is a fully compliant brokerage house, having dual verification of regulatory requirements. We have reinforced both Risk Management and Risk Management Department and appointed qualified and experienced personals. Now, we are in compliance with all regulatory requirements including AM L & CDD/KYC according to the Guidelines provided by the SECP.*





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(xii) *The Respondent does not concur that there has been absence of customer identification, absence of risk assessment and categorization of clients, absence of enhanced due diligence, lack of ongoing monitoring and lack of proper trainings etc. The Hon'ble Commission may kindly appreciate that the customer identification process initial assessment and categorization of clients are all in place. Further, EDD procedures are also carried out by the Respondent and the requirements are timely highlighted to the clients for provision of additional documentation wherever required.*

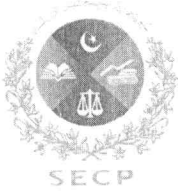
6. I have heard the arguments presented by Representative of the Respondent during the hearing. Additionally, I have perused the available record, existing regulatory framework and written response filed by the Respondent. The primary allegation against the Respondent is that it acted in non-compliance 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) Respondent has rectified various non-compliances after the same were highlighted by the inspection team and has admitted the same in its response and during course of the hearing;
- (ii) while the Respondent does not accept third party payments and uses documented channels for movement of funds, however the KYC/CDD Guidelines specifically require that the source of funds and nature of income of the customer is determined by the securities broker. Reliance on modes of payments is not sufficient to develop profiles of customers;
- (iii) in relation to risk categorization of customers, the Respondent has furnished certain information. However, it was noted that a trust namely Khatija Adamjee Foundation has not been categorized and the account was closed in January 2018. The Respondent has not contended the observation that risk categorization of the said customer had not been done during the review period, i.e. the time when the account was still open, as required by the KYC/CDD Guidelines of PSX. Furthermore, no response has been furnished by the Respondent regarding absence of Enhanced Due Diligence of its High Risk customers;
- (iv) for cash receipts in excess of Rs.25,000, it has been noted that the relevant report has been made to PSX after the same was highlighted by the inspection team and the Respondent has rectified the non-compliance; and
- (v) reporting of non-compliances relating to KYC/CDD and maintenance of its record for inspection by the Commission is a requirement of the law and a responsibility of the securities broker. Although the Respondent claims to be compliant with the law, it has been observed that compliance report only for the month of September 2017 was shared with the Commission while reports for July and August 2017 are not available. Respondent has also not responded to the same in its reply which gives the impression that the compliance reports were not maintained by the Respondent for the said months.

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





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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 shall be 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.